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Of
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Tuesday, 13 January 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART McDOUGALL
Member from the Dominion of Canada, not sitting from
0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: The Tribunal adheres to its
4 decision to receive evidence in rebuttal. Whether any
5 particular piece of evidence will be received will
6 depend upon the circumstances.

7 Mr. Cunningham.

8 MR. CUNNINGHAM: Your Honor, yesterday you
9 suggested that, "We treat that as a submission of law
10 by counsel for the defense and counsel for the prosecu-
11 tion. There may be some dissent among the counsel for
12 the defense. We will be only too happy to hear any
13 contrary submission."

14 THE PRESIDENT: I said we treat it as a
15 submission to the Court, not as an agreement among
16 the parties by which the Court is bound. The Court
17 could not be bound by any agreement among the parties
18 on such a matter as the state of the law; but I said I
19 did not anticipate there would be any contrary view
20 expressed by the Court.

21 MR. CUNNINGHAM: Yes, but, your Honors, I did
22 not wish to have even intimated that I agreed in any
23 respect with what Mr. Carr said. I think that it was
24 a wicked thing for him to say, that there was an agree-
25 ment among counsel on this proposition.

1 THE PRESIDENT: Do not make those provocative
2 remarks, Mr. Cunningham. They are wholly unnecessary.
3 Mr. Carr explained that he thought that he had the
4 concurrence of the defense, the complete concurrence.

5 MR. CUNNINGHAM: Don't you think that it is
6 his duty to ascertain first, before he makes a bold
7 statement like that, that he has the authority to speak
8 as he speaks.

9 What I started out to say, your Honor, was
10 that yesterday I didn't have a chance to go through
11 except one point on these submissions that Mr. Carr
12 made. Now, I don't propose to take the time of the
13 Tribunal to go through the rest of them except to note
14 here that the rest of them are equally objectionable
15 down to the suggestion about the law of Japan. That
16 is the only thing in the matter which was under dis-
17 cussion at the time and on which we can maybe express
18 similar views.

19 I am speaking for myself and I wish to state
20 that no one on the defense panel has any right to make
21 an agreement for me on any submissions of law.

22 THE PRESIDENT: Mr. Logan.

23 MR. LOGAN: If the Tribunal please, I just
24 want to clarify this. I believe Mr. Carr had all the
25 right in the world to say what he did yesterday.

1 THE PRESIDENT: Mr. Carr can afford to
2 ignore those observations. I hate to say that
3 because he can well say it for himself, but I would
4 like to save time.

5 MR. LOGAN: I just want to say that we told
6 him that that was our agreement. We had a meeting
7 yesterday, Mr. Cunningham wasn't there, and all of us
8 who were at the meeting believed it was a sound propo-
9 sition as it was stated by Mr. Carr.

10 THE PRESIDENT: Mr. Comyns Carr.

11 MR. COMYNS CARR: May it please the Tribunal,
12 I now propose to answer the objection to IPS document
13 No. 1634-M on the point that was raised--

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: Now, coming to document No. 1634-M
16 I also wish to point out, in addition to the statements
17 I made yesterday, that this particular document has
18 not been denied by any of the witnesses who took the
19 stand on behalf of the defense. In his submission
20 yesterday Mr. Carr stated that the witness KAWABE
21 denied this document, denied the contents of it. He
22 did not deny it and the pages referred to, 22,029-
23 22,031, specifically show that he was asked some
24 questions about an alleged meeting at this time and
25 stated he had no recollection of it, and his counsel

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19 stand on behalf of the defense. In his submission
20 yesterday Mr. Carr stated that the witness KAWABE
21 denied this document, denied the contents of it. He
22 did not deny it and the pages referred to, 22,029-
23 22,031, specifically show that he was asked some
24 questions about an alleged meeting at this time and
25 stated he had no recollection of it, and his counsel

1 at that time objected to any further statements con-
2 cerning a meeting held on or about the time set forth
3 in this document and those objections were overruled.
4 He stated that he had no recollection with respect to
5 two or three questions, apparently the subject matter
6 of which came from this document, although we don't
7 know. In other words, questions were asked the
8 witness, this document was not marked for identifica-
9 tion, so that we do not know if this is the particular
10 document on which the cross-examination of KAWABE was
11 being conducted. It was the next day, still during
12 the examination of KAWABE, that I suggested to the
13 Tribunal that if the witness was being examined on
14 any particular document that it be marked for identi-
15 fication or some method be devised whereby we would
16 know on which document the witness was being examined
17 so that we could cross-examine the same witness on the
18 same document. That permission was denied us. So we
19 have here a situation where the prosecution had this
20 document on June 18, 1946, that was five days before
21 they started to introduce evidence in this case --
22 excuse me, after. They did not present this document
23 as part of their case, apparently feeling it did not
24 have any value, and when they present it to a witness
25 for cross-examination they themselves are the ones that

are raising the new matter; not us. In other words,
1 having failed to show the events set forth in this
2 document in its case, the prosecution presents several
3 questions to a witness and the witness has no recollec-
4 tion of them, and now they wish to introduce the
5 document. For what purpose? It can't be to attack
6 the witness' credibility because the witness has
7 denied any recollection of it, so apparently the only
8 purpose is that the prosecution is, through this method,
9 endeavoring to bolster its case, which it should have
10 presented in the first instance.
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1 MR. COMYNS CARR: Your Honor, are there to
2 be two counsel allowed to object to the same document?

3 THE PRESIDENT: I do not know why Mr. Yamaoka
4 is there yet. What do you propose to say?

5 MR. YAMAOKA: If your Honors please, a
6 specific document may affect half a dozen or more
7 accused, and --

8 THE PRESIDENT: Against whom is it offered
9 in particular? Is it offered against all or against
10 one or more only?

11 MR. YAMAOKA: Well, if your Honors please --

12 THE PRESIDENT: There should only be one
13 counsel for the defense to argue on documents pre-
14 sented in the general phase and only one counsel to
15 argue on documents presented against a particular
16 accused.

17 MR. YAMAOKA: I should like to make some
18 observations regarding that, if your Honors please.
19 Where a document is offered, whether in the general
20 phase or, let's say, in an individual phase and it
21 affects not only one particular accused but half a
22 dozen or more, which is quite possible and actually
23 has occurred in this case, it would seem to us, we
24 respectfully submit, that each counsel for the accused
25 affected should have the right to tender his own

objections.

Furthermore, specifically as to this document, it was used as a basis for cross-examination of the witness HORINOCHI, a witness who appeared in Mr. HIROTA's case, and I appeared as counsel in that case. The same matter was also referred to the witness KAWABE in General SATO's case. Oh, I stand corrected: Mr. Carr informs me it was Mr. KAWABE when he appeared in the general China phase.

I might suggest, if your Honors please, that if the prosecution will clearly state and limit the scope of this evidence and specify against which defendant or accused this document is being tendered, then that might in some way assist the Tribunal in cutting down and limiting the objections to be made by various counsel. I feel quite confident that all counsel will endeavor to cooperate as much as possible with the Tribunal in avoiding unnecessary objections. But, especially in the light of the fact that this is a conspiracy charge involving all of the accused, in instances such as this where more than one accused is involved I cannot very well see how counsel could be limited to one in making any objection on a specific document.

THE PRESIDENT: Is not the position exactly

1 the same as when the prosecution was putting its
2 case in chief? We had no difficulty of this kind
3 then. You had the prosecution giving evidence in the
4 general phases; you had them giving evidence against
5 the individual accused. But we had no real difficulty
6 about the number of counsel arguing questions of law
7 and of admissibility of evidence.

8 MR. YAMAOKA: Well, I do not anticipate any
9 great difficulty, if your Honors please, but I might
10 point out that, even during the presentation of the
11 prosecution's case, whether in the individual phases
12 or in the general phases, counsel for the accused
13 affected by any specific piece of evidence, whether
14 one or six, had the right to get up and object or
15 state their position in respect thereof.

16 THE PRESIDENT: Well, I suggest you be as
17 cooperative during the rebuttal as you were during
18 the case in chief.
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1 MR. YAMAOKA: We shall endeavor to do so, if
2 your Honors please, and I therefore shall not state
3 the objections already made by my learned colleagues.

4 THE PRESIDENT: You are putting a point that
5 affects your particular accused only?

6 MR. YAMAOKA: Yes, your Honor.

7 THE PRESIDENT: You are not going to repeat
8 anything already put by Mr. Logan?

9 MR. YAMAOKA: No, if your Honors please.

10 Referring specifically to IPS document 1634-M,
11 I first wish to point out that we have received a
12 certificate signed by James Hoyt, dated 7 January 1948,
13 which states that this document, that is the original,
14 was mislaid by a member of the International Prosecution
15 Section who is unable to locate it; however, that the
16 Japanese copy of the document to be tendered in evidence
17 is an exact copy thereof. I might also state, if your
18 Honors please, that this matter was covered in para-
19 graph 11 of the affidavit of the witness HORINOUCI
20 and when he was cross-examined on this document, or
21 the purported contents of this document, he stated
22 that he could not locate -- although he had recollec-
23 tion of having seen this document he could not find it.
24

25 It now appears that whether this is the docu-
ment to which the witness referred specifically or not

1 is subject to some question. But I respectfully sub-
2 mit that he has already testified to the substance of
3 this document and it is, therefore, merely repetitive
4 not only of what HORINOCHI stated but also of exhibit
5 3262, which is a cabinet decision of a later date, and
6 telegrams which have been offered in evidence, exhibits
7 3280 and 3280-A to D. I might also state that pertinent
8 to this subject matter of this document the Tribunal
9 will find Exhibit 3276 and 3277 of relevance. Moreover,
10 whereas the second and third portions of this document
11 are dated, the first part, that is page 1, 2 and top
12 of page 3, is undated.

13 Finally, in view of the fact that the witness
14 was not shown this document so as to be given an oppor-
15 tunity of affirming its correctness or denying its
16 authenticity it is not proper, we respectfully submit,
17 at this stage to tender this document, especially in
18 view of the fact that the prosecution had this docu-
19 ment in its possession since June of 1946.

20 MR. COMYNS CARR: May it please the Tribunal.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: As this document illustrates
23 a number of the points which will arise in the course
24 of presenting these documents, perhaps I had better
25 reply rather fully to the objections.

1 First of all with regard to the date of the
2 certificate, the certificate, if your Honors will
3 look at it, applies to IPS document No. 1634 which
4 is described as a file of important decisions re inter-
5 national and national policies, 1934 to 1937. This
6 particular document is one of those in that file and
7 covered by the certificate, namely, 1634-M.

8 THE PRESIDENT: That certificate should be
9 distributed among the judges. Two at least of the
10 Judges haven't copies of it yet.

11 MR. COMYNS CARR: This, therefore, illustrates
12 what I was saying yesterday about the vast mass of
13 Japanese documents which have from time to time come
14 into the physical possession of the prosecution but
15 not all of which it was possible to examine at the time
16 and to determine their importance.

17 Now, it was discovered and put to the witness
18 KAWABE or questions based upon it were asked of the
19 witness KAWABE at page 22,029, he having professed
20 earlier in his evidence to be familiar with all the
21 main matters that had gone on in connection with negoti-
22 ations between Japan and China for the settlement of
23 the Incident, subject to the qualification "depending
24 on the problem." But when he was asked about this
25 meeting and the decisions taken at it at page 22,029

1 he denied all knowledge of it.

2 Then objection was taken by Mr. BANNO on the
3 ground that no evidence or document had been presented
4 regarding the holding of any such conference and that
5 the question was based on a mere hypothesis. Then
6 your Honor said, "No, necessarily. He can be asked
7 questions in order to establish facts. But we will
8 expect the prosecution to attempt to establish the
9 fact later if the witness fails to do it for them."

10 As far as that part of it, that aspect of it
11 is concerned, all we are doing now is giving effect
12 to the expectation expressed by the Tribunal.

13 Now with regard to HORINOUCI --

14 THE PRESIDENT: You are attempting to establish
15 the fact, but you may fail because of objections. You
16 are showing your good faith.

17 MR. COMYNS CARR: In my submission ample
18 foundation was laid for the matter at that stage.

19 Now with regard to HORINOUCI the position is
20 this, that in his affidavit, exhibit 3260, page 29,692,
21 he spoke of a decision of these very ministries which
22 he says was about the 5th or 6th of August, and he
23 purported to give the contents of it from memory. It
24 was not realized at the time that what he was really
25 speaking about was the same conference mentioned in

1 this document. So when he was cross-examined about it
2 at page 29,762 and he said he had made search for it
3 and found it was burnt we took his word for it. His
4 exact words were, "I did try (to find it) but because
5 many of the files of the Foreign Office have been burnt
6 I was unable to locate it." And then there was a
7 suggestion by Mr. Yamaoka that another document was
8 the one in question, which turned out to be a mistake,
9 and the matter was left there, his word being taken
10 for it, that he had searched and it was burnt.

11 Now we find on comparing this document with
12 the dates which he gives and the account which he
13 gives of it in his affidavit that this is clearly the
14 document he was referring to but that he has mis-
15 represented the contents. In our submission that ful-
16 fills all the strictest conditions of rebuttal.

17 MR. YAMAOKA: Well, if the Tribunal please,
18 if Mr. Carr is finished I should like to be permitted
19 a short statement in view of the importance of the
20 witness and in the light of the charges he has osten-
21 sibly made against the witness.

22 THE PRESIDENT: By a majority the objection
23 is overruled and the document admitted on the usual
24 terms.
25

MR. YAMAOKA: If the Tribunal please, I don't

1 wish to argue the objection which I made but in the
2 light of the record and the statement made by Mr. Carr
3 against this witness and the importance of this wit-
4 ness to Mr. HIROTA's case, may I be permitted to quote
5 a part of the record relating to this document?

6 THE PRESIDENT: What is the page?

7 MR. YAMAOKA: The page, if your Honors please,
8 is record 29,762 and 29,763.

9 THE PRESIDENT: What part of each page? There
10 isn't much on either page.

11 MR. YAMAOKA: Well, if your Honors will
12 observe the third from the last question down to the
13 top of the page, record 29,763, it will be observed
14 that the witness himself did not state definitely that
15 this document which the prosecution now is tendering
16 was burned.

17 THE PRESIDENT: If he didn't mean that he
18 misled us to say the least.

19 MR. YAMAOKA: I respectfully submit that the
20 witness certainly did not mislead the prosecution
21 because they had those documents in their possession all
22 the time, even six months previously to that time, and
23 cross-examined on the basis of those documents.
24

25 THE PRESIDENT: Call the number.

CLERK OF THE COURT: Prosecution document

1 1634-M will receive exhibit No. 3735.

2 MR. COMYNS CARR: I will now read it:

3 "Top Secret

4 "Plan for Disposing of Incident.

5 "General Principle

6 "1. General policy:-

7 "It is our main object to settle the present
8 Incident as quickly as possible by effective military
9 operations as well as successful diplomatic measures
10 so that China shall lose her pretext for anti-Japanism
11 and there may be created between Japan and China a
12 fair and permanent diplomatic relation with coopera-
13 tion and co-prosperity between Japan, Manchukou and
14 China.

15 "2. The aim of our military action:-

16 "The aim of our military action is to make
17 China give up her will to fight in the shortest possible
18 time. For a prompt settlement of the incident, such
19 measures as the use of military force, occupation of
20 strategic points and accompanying necessary operations,
21 etc., shall be taken.

22 "3. The aim of the diplomatic measures:-

23 "The aim of diplomatic measures is to urge
24 China's reconsideration as soon as possible so that
25 she may be led to such position as desired by us. For

1 this purpose, timely negotiations and actions will
2 be carried out.

3 "4. The way of settling the Incident and
4 remedial measures:-

5 "The way of settling the Incident and its
6 remedial measures is to make China lose her pretext
7 for anti-Japanese policy, and to negotiate with her
8 under such epoch-making conditions not biased by
9 past circumstances.

10 "5. Military and diplomatic measures and
11 accompanying operations shall be carefully taken with-
12 in the bounds of international law.
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"Criterion.

1 "1. The extent and way of using military
2 force:

3 "a. Principal areas for using military
4 force on the land shall be Hopeh-Chahar and Shanghai.

5 "b. Against areas where it is necessitated,
6 military operations shall be carried out from the sea
7 and from the air.

8 "2. Strategic preparations in the rear:

9 "For the purpose of carrying out military
10 operation smoothly, bring the activities of various
11 organs of the nation to wartime status by taking such
12 steps as to execute general mobilization and establish
13 emergency laws.

14
15 "3. Brighter NORTH CHINA:

16 "The settlement of the NORTH CHINA problem
17 aims at the realization of co-existence and co-prosperity
18 of JAPAN, MANCHUKUO and CHINA, bringing about a really
19 bright NORTH CHINA under the control of CHINA's Central
20 Government.

21 "4. Brighter CENTRAL SOUTH CHINA:

22 "In disposing of the Incident, we expect to
23 see the creation of such condition in Central China
24 and South China as to be suitable for continuous
25 promotion and development of trade between Japan and

China.

"5. Measures to be taken behind NORTH CHINA operation field:

"Measures to be taken behind the operation field of NORTH CHINA in the course of the Incident should be for the most part shaking off any idea of enemy territory occupation:

"1. There shall be no administration by the Occupation Army but maintenance of peace and order shall be ensured under our Army's guidance.

"2. Political organs shall be left to the local inhabitants for free organization. However, we will give necessary guidance to make them carry out a fair administration.

"3. Development of transportation facilities and exploitation of materials necessary for military purpose shall be put under necessary control. However, Nos. 2 and 3, stated above, shall have no influence over adjustment of national relationship after the peace settlement.

"6. Foreign trade and economic and financial relations:

"Trade, economic and financial relations between JAPAN, CHINA and third countries shall be ruled in line with our main object of making CHINA get rid

of her hostile spirit.

1 "7. Relations with third countries:

2 "Military action, diplomatic measures as well
3 as the accompanying actions, shall be carefully taken
4 lest they should cause any entanglements with third
5 countries or induce their intervention.
6

7 "8. Measures regarding Japanese residents:

8 "Depending upon the situation, all Japanese
9 residents shall be evacuated. Their relief will be
10 considered.

11 "Additional remarks.

12 "Although it is our main purpose to bring
13 the Incident to an immediate settlement, we should be
14 determined to exercise military power on a large scale
15 and for a long period of time. Therefore, by taking
16 necessary steps in this connection, we should make quick
17 preparations so as to be able to meet any development
18 in the situation.

19 "(Marginal note: Decided on August 7 at the
20 Office of the Premier, by Foreign, Army & Navy Ministers,
21 and their signatures.)
22

23 "I - The Foreign Office will try secretly
24 and as quickly as possible to have the Chinese make
25 proposals for peace.

"II - The conditions for settling the

situation are generally as follows:

"A - Creation of a disarmed zone:

"(Marginal note: First plan entrusted to the Foreign Ministry.)

"1. The eastern and northern areas of the line which connects PAOCHANG-CHANGPEI,--LUNG MEN--YENKING--MENTOUKOU--CHOW-CHOW--KUAU--YUNGTSIN--SINGAN--TULIUCHEN--HSINGNUNCHEN--FAOSHALING (including areas on the line), shall be a disarmed zone shutting out Chinese troops. The maintenance of peace and order in these districts shall be in charge of the 'Peace Preservation Corps' whose strength and equipment shall be stipulated in another article.

"(Marginal note: Second plan, taken as the final one.)

"2. PAOCHANG--CHANGPEI--LUNG MEN--YENKING--MENTOUKOU line (including areas on the line) and the adjoining areas in the HOPEI Province, left of the Yungtung and Hai rivers (including CHANGSINTIEN and its neighboring uplands and TIENTSIN and its vicinity) shall be disarmed zone (the maintenance of peace and order by the 'Peace Preservation Corps' as mentioned in 1, above).

"3. In case CHINA, in accepting the above, 1 or 2, lay emphasis on a time limit to be attached to

1 the disarmed zone, there is no objection to such a time
2 agreement.

3 "(Marginal note: To be studied during nego-
4 tiation.)

5 "(However, in case a time limit is attached,
6 we will take into consideration what is to be done on
7 its expiration.)

8 "(Marginal note: First plan, entrusted to
9 the Foreign Ministry.)

10 "(However, in case a time limit is attached,
11 an understanding shall be reached that on its expiration
12 another disarmed zone shall be newly-established along
13 the Sino-Manchurian border, drawn by a fixed line (for
14 instance, 30 kilometers from the Great Wall.)

15 "(Marginal note: Second plan, taken as the
16 final one.)

17 "B - The limit of the Empire's sanction:

18 "1. According to necessity, we will express
19 our willingness to voluntarily reduce the strength of
20 our occupation troops within the limits of the strength
21 at the time of the Incident's outbreak.

22 "2. The TANGKU Truce Pact shall be abolished.
23 Various agreements based on this pact will be adjusted,
24 if necessary. However, various arrangements based
25 upon the PEIPING Arrangement, such as

"a. Confiscation of the Great Wall's gates

"b. Through railway traffic

"c. Customs

"d. Through mail service

"e. Aviation

"shall not be abolished.

"The DOIHARA-CHIN TE-CHIN and UMEZU-HO

YING-CHIN Agreements shall be abolished (though it is
a matter of course that the Central Army having
penetrated into the HOPEI Province will have to be
evacuated from the Province). However, we will make
CHINA promise to strengthen her control of anti-
Japanese movement as well as preventing Bolshevization
in the above disarmed zone.

1 "3. We agree to the dissolution of the
2 HOPEI-CHAHAR and EASTERN HOPEI governments, and the
3 administration in these districts be left at the
4 discretion of the Nanking Government.

5 "We hope, however, that the Chief Adminis-
6 trators in these districts would be influential
7 persons suitable for realizing Sino-Japanese harmony.

8 "Further, in the above connection an
9 agreement shall be reached on the purport of economic
10 collaboration in NORTH CHINA, but it, of course,
11 should be a collaboration under the joint management
12 based upon Sino-Japanese equality. (Note: Although
13 we are of the mind that there is no objections to
14 the dissolution of the EASTERN HOPEI Government, we
15 must consider making the most of the bargaining in
16 the negotiations.)

17 "(Marginal Note: To be kept in mind by the
18 Foreign Ministry).

19 "C. Negotiations for adjusting Sino-
20 Japanese relations, unbiased by past circumstances,
21 shall be made concurrently with or following the
22 peace negotiations stipulated in A and B. This plan
23 will be explained separately.

24 "NOTES: I. If the above peace agreement
25 be reached between Japan and China, and the evacuation

1 of Chinese troops from the disarmed zones and the
2 Central Army from the HOPEI Province, is effected,
3 then the evacuation of our troops shall commence.
4 (The announcement of our intentions of evacuation,
5 however, shall be timed with the reaching of the
6 above agreement.)

7 "II. Further, on reaching the above peace
8 agreement, a mutual announcement shall be made that
9 the two countries will henceforth enter into a
10 'New Deal' for realization of true friendship."

11 And then, "TOP SECRET (S+amp)

12 "Outline of the Proposal for the General
13 Adjustment of Sino-Japanese Relations (Evening
14 6 August 1937)."

15 "I. Political Side:

16 "1. CHINA shall give a tacit promise to
17 leave MANCHOUKHO alone.

18 "2. Conclusion of an anti-communistic
19 agreement between JAPAN and CHINA. (Consequently,
20 anti-communism in the disarmed zone will naturally
21 be practiced, and it shall be strictly controlled
22 in this area).

23 "3. Besides dissolving EASTERN HOPEI and
24 HOPEI CHAHAR governments by virtue of the conditions
25 for peace, JAPAN will negotiate with NANKING on

1 INNER MONGOLIA and SUIYUAN districts in an effort
2 to have it accept our rightful requests (mostly
3 included in the above, 2) and we have no intention
4 of excluding NANKING's influence from those districts.

5 "4. CHINA shall strictly control anti-
6 Japanese movements and emphasize its 'good neighbor
7 Ordinance' throughout the country. (Naturally, any
8 anti-Japanese movement in the disarmed zone must be
9 especially controlled in strictness).

10 "II. Military Side:

11 "1. If China strongly demands the abolition
12 of the SHANGHAI Peace Agreement, we will agree after
13 making the most of the transaction.

14 "2. Abolish free aviation.

15 "III. Economic Side:

16 "1. Lowering of customs tariff on specific
17 articles.

18 "2. Rightful abolition of EASTERN HOPEI
19 special trade and restoration of free-hand control in
20 CHINA's smuggling on the sea bordering the disarmed
21 zone."

22 THE PRESIDENT: Mr. Comyns Carr, can you
23 tell us whether the Japanese document which is here
24 translated is contained in 1634?

25 MR. COMYNS CARR: The original was one of

1 many documents in that file. As the second certifi-
 2 cate shows, the original has been mislaid, but before
 3 it was mislaid a copy had been made from it.

4 THE PRESIDENT: Yes.

5 Captain Brooks.

6 MR. BROOKS: If your Honors please, I think
 7 in view of the statement that the prosecutor has just
 8 made there is no original before this Court of this
 9 document. There is nothing to check the translations
 10 against, and as I had understood the situation before-
 11 hand that there was a master original but that part
 12 of the file was gone. Now it appears that the entire
 13 file has disappeared, and all we have is the word of
 14 one prosecutor vouching for another that a certain
 15 document that they have is a true and accurate copy,
 16 which in my estimation is a loose practice for a court
 17 of this importance to follow. I would like to move
 18 that until the original be produced the Court not
 19 give this document the same weight as they would in
 20 the ordinary circumstances where we have a right to
 21 check the translation from the original.

22 THE PRESIDENT: Courts everywhere receive
 23 copies where originals are proved not to be available--

24 MR. BROOKS: I understand that, your Honor,
 25 from the official custodian of the document.

1 THE PRESIDENT: -- even though the original
2 be in another language. There is no loose practice
3 involved in accepting the best evidence available
4 unless all courts throughout the world are guilty of
5 loose practice. It may go to weight. That is the
6 most that could be said, but you could put that in
7 your summation. We urge the prosecution to continue
8 to search for the original. We can do no more.

9 MR. BROOKS: If your Honor please, I
10 recognize the observation of the Court, but the usual
11 practice is that the official custodian of the docu-
12 ments makes a certificate of that nature, but not
13 an interested party vouching for his own evidence.

14 THE PRESIDENT: Mr. Carr.

15 MR. COMYNS CARR: I now offer in evidence
16 IPS document No. 820-A, which has already been marked
17 for identification at page 29,886 as exhibit 3268,
18 in the course of the cross-examination of the witness
19 HORINOUCI, at page 29,786 and onwards, who declined
20 to identify it although he admitted that it was on
21 Foreign Office paper. It consists of a memorandum of
22 October 11, 1937, from the War Department, marked
23 "approved" by the Foreign Minister on October 21, and
24 a further decision of the War, Navy and Foreign
25 Departments on October 22.

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1045, a recess was
4 taken until 1100, after which the proceedings
5 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Carr, the certificate
4 distributed among the Judges this morning has not
5 yet been tendered.

6 MR. COMYNS CARR: Yes, your Honor, I was
7 just going to deal with that matter. I should have
8 tendered with document 1634-M the two certificates,
9 one covering the whole file, 1634, and the other
10 accounting for the absence of the original of 1634-M,
11 and I ask that they be attached to the exhibit and
12 marked accordingly or marked separately, whichever
13 the Tribunal thinks proper.

14 THE PRESIDENT: They will be 3735-A and B
15 respectively.

16 MR. COMYNS CARR: If your Honor pleases.

17 Then with reference to exhibit 3268, which I
18 have just asked to be received in evidence as distinct
19 from identification, I tender the certificate relating
20 to the same document, which is IPS document 820-A.

21 THE PRESIDENT: Admitted on the usual terms.

22 MR. YAMAOKA: If the Tribunal please, I was
23 going to offer an objection to that document.

24 THE PRESIDENT: Oh, yes; well do so. I didn't
25 anticipate that, Mr. Yamaoka.

1 MR. YAMAOKA: We respectfully object to
2 this document, if your Honors please, on the ground
3 that this is a matter which should have been introduced
4 in the general phases or the individual phases of the
5 prosecution during its main case and is not a proper
6 matter for rebuttal.

7 Specifically, I also wish to state that there
8 are a number of documents dealing with Japan's views
9 toward the intervention by third powers in China and
10 the attitude of Japan with respect to the intervention
11 by the League of Nations. And I respectfully submit
12 that this document adds nothing new to the case and is
13 merely repetitive of other evidence already in the case.

14 MR. COMYNS CARR: Your Honor, with regard
15 to the first objection, this document is in exactly
16 the same category as three or four exhibits; 3263, -4
17 and -5, which were admitted in the course of the
18 cross-examination of HORINOUCI because he agreed that
19 they were Foreign Office documents. The only reason
20 why this document was not admitted into evidence at
21 the time was that he refused to agree that it was a
22 Foreign Office document; but we now have a certificate
23 that it is.
24

25 No doubt if we had known of this document
at the time when the prosecution case was presented,

1 we might have put it into evidence then. But it does
2 definitely rebut the evidence of HORINOUCI, who
3 professed as Vice-Foreign Minister to be able to
4 tell us all about the accused HIROTA's opinions and
5 policies during this period, and he was cross-examined
6 about and denied parts of its contents.

7 With regard to the second objection that
8 there are already documents in evidence dealing with
9 Japan's attitude to international intervention, that
10 is, by no means the only matter dealt with in this
11 document. And secondly, the documents already in
12 evidence are the documents which they published to
13 the world. This is a document which they kept to
14 themselves and shows their real reasons.

15 THE PRESIDENT: Have you the page of the
16 transcript when that document, exhibit 3268, was
17 admitted?

18 MR. COMYNS CARR: 28,886, your Honor. That
19 was when it was marked for identification with a
20 number of others at the conclusion of his evidence.
21 But the part where he was cross-examined about it
22 begins at page 29,786. I may say that it was marked
23 for identification at the expressed request of the
24 defense.
25

THE PRESIDENT: Yes, HORINOUCI did challenge

its authenticity at that page.

1 MR. COLYNS CARR: Yes.

2 THE PRESIDENT: The objection is overruled
3 and the document admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution document
5 No. 820-A, now exhibit No. 3268 for identification
6 only, will be marked as received in evidence and will
7 retain the same exhibit number.
8

9 (Whereupon, the document above re-
10 ferred to, previously marked exhibit No. 3268
11 for identification, received the same exhibit
12 number and was received in evidence.)
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1 MR. COMYNS CARR: I will now read exhibit 3268:

2 "October 11, 1937

3 "The War Department

4 "Views Concerning the Attitude of the Empire to-
5 ward Arbitration or Intervention by America, European
6 Powers or the League of Nations in the Sino-Japanese
7 Incident.

8 "Decision

9 "I. The Empire will forcibly refuse and exclude
10 any intervention or pressure by America, or European
11 Powers, or the League of Nations in connection with the
12 Sino-Japanese Incident but will accept peace-recommending
13 arbitration after it has achieved the object of its
14 military movements against China.

15 "II. This principle, upon being confirmed after
16 deliberation by the three departments of the Navy, Army
17 and Foreign Affairs, shall be sent to the necessary
18 envoys in foreign countries with orders to act in accord-
19 ance with it.

20 "As for Germany and Italy, we will inform them
21 of this decision at an appropriate time and require them
22 to support our assertion.

23 "The Main Points of Our Reasons.

24 "I. The co-operation of England and America
25 and the meeting of the signatory powers of the Nine

1 Power Treaty -- all these recently increasing signs show
2 that the powers and the League of Nations may interfere
3 or arbitrate in the Sino-Japanese Incident.

4 "Such interference and arbitration before we
5 accomplish the purpose of our military movement will
6 never make China feel contrition. Moreover, we ourselves
7 will forcibly prevent and reject them if they are not
8 impartial peace-recommending arbitration /proposals/ even
9 after we have accomplished the purpose of our military
10 movement because this would be throwing away the results
11 of all our previous efforts. But we find no reason for
12 rejecting just, peace-recommending arbitration as it may
13 facilitate negotiation between Japan and China. There-
14 fore, if such countries as Germany and Italy, though
15 they are not so powerful as England and America, should
16 come forward as arbitrators at the request of China, we
17 are sure it would be the better on account of their
18 special relations with us.

19 "II. Though this principle is generally
20 accepted by all people, it is not yet decided upon as the
21 national attitude. Therefore it should be negotiated
22 among the three departments of War, Navy and Foreign
23 Affairs and become the foundation of the diplomatic
24 measures of the country. But we should be careful not to
25 publish it too hastily, nor to speak of it to the Powers,

1 as it may give them the impression that Japan is anxious
2 to bring the incident to a close. Nevertheless, we think
3 it advantageous that we should give it special consider-
4 ation in respect to Germany and Italy.

5 "Very Secret

6 "Approved by the Foreign Minister on October 21

7 "In the Matter of the Course Decided upon to be
8 Taken by the Imperial /Japanese/ Government Concerning
9 Mediation or Intervention by Third Powers in Connection
10 with the Sino-Japanese Incident.

11 "Decision of the three Departments of War,
12 Navy and Foreign Affairs on October 22, 1937.

13 "With the progress of the Sino-Japanese Inci-
14 dent, England, Soviet Russia and the United States
15 gradually showed indications of intervening in the Inci-
16 dent. If we come to look at such things as the decision
17 of the League of Nations and the invitation of the
18 signatory powers of the Nine-Power Treaty, they are
19 either intervention or arbitration founded on placing
20 Japan from the first in the position of a defendant. It
21 was natural that we should reject them from the first.
22 With the advance of our military movement, when its pur-
23 pose shall be practically attained, the Nanking Govern-
24 ment, under the pressure of our force, will in their
25 hearts want to sue for peace with us although they are

obliged to assume outwardly a strong attitude. The good-
will offices of England, United States and other third
parties, in such a case, will be advantageous, if their
means were proper, to be used to draw China /to the
negotiation/. If Germany and Italy, who are on friendly
terms with us, should act as arbitrators at the request
of China, it would be excellent.

"Such being the case, we want to decide beforehand upon the following principles among the three
departments of War, Navy and Foreign Affairs at this
time:

"1. We positively refuse and exclude hasty
intervention or arbitration by third parties in connection with the Sino-Japanese Incident, but we may accept
impartial peace-recommending services from third parties
at a time when we have nearly achieved the purpose of
our military movements toward China.

"2. The aforesaid policy shall be sent to our
appropriate envoys in foreign countries and they shall
be instructed to take measures accordingly. But we
should avoid publishing it too hastily or making it known
to foreign governments because this is not an advisable
measure as it may give them an impression that we are in
a hurry to conclude the Incident because of some weakness within our Empire. We should avoid that and notify

1 the aforesaid policy beforehand only to Germany and
2 Italy on some proper occasion and take such measures
3 as might induce them to act according to our wishes.

4 "3. As to when we should recognize that the
5 purpose of our military movements toward China has nearly
6 been accomplished, or that we had better notify the
7 policy to Germany and Italy, this will be decided as a
8 result of consultation among the three departments of
9 War, Navy and Foreign Affairs."

10 I now offer in evidence I.P.S. document No.
11 820-G, which was marked for identification as exhibit
12 No. 3249 on page 29,866 and was put to the witness
13 HORINOUCI, who declined to identify it at page 29,858.
14 It now has a certificate to show that it is a Foreign
15 Office document.

16 MR. BLAKENEY: If the Tribunal please.

17 THE PRESIDENT: Major Blakeney.

18 MR. BLAKENEY: I wish to offer a few objec-
19 tions to this document of the many which leap to the eye
20 from the perusal of it.

21 THE PRESIDENT: At the request of a Member of
22 the Tribunal, the certificate last admitted is referred
23 to the Language Arbitration Section. The certificates
24 are all in English, are they not?
25

MR. COMYNS CARR: I think so, your Honor.

THE PRESIDENT: However, proceed, Major Blakeney.

1 MR. BLAKENEY: Concerning document No. 820-G,
2 the copy served on the defense has no certificate
3 annexed, although Mr. Comyns Carr states that there is
4 now a certificate.

5 There does seem to be a certificate, which I
6 am now shown.

7 In any event, quite aside from that question,
8 I think it is apparent from the number of this document,
9 which is relatively a very low one, that it, in common
10 with the one just offered and others to follow, has
11 been in the possession of the prosecution for some con-
12 siderable period of time, and unless, therefore, it is
13 in some way genuine rebuttal, properly so speaking, I
14 think there can be no contention that it should be re-
15 ceived.
16

17 Now, I submit to the Tribunal that this docu-
18 ment constitutes impeachment of no one and rebuttal of
19 nothing. On the contrary, it is, I think, easily the
20 most preposterous farrago yet offered of gossip, rumor,
21 and hearsay thrice compounded. The author of this docu-
22 ment, whoever he may be, heard indirectly from an un-
23 identified high ranking official of some unidentified
24 ministry or organ that he had had it of an unidenti-
25 fied officer of the Army General Staff. Our unknown

1 author, after reciting this, quite properly declares
2 himself doubtful as to the reliability of the information
3 above recited. And, if the test of these documents is
4 to be as the prosecutor has suggested, the extent of the
5 assistance which they give to the Tribunal, I think it
6 must be apparent that the extent of the assistance
7 rendered by this document is nil.

8 Parenthetically, I might say that there is no
9 showing whatever that the author of this document is
10 not still in the Foreign Ministry, if he was ever there,
11 and available for cross-examination, and I see no reason
12 why he should not be so produced, rather than this collec-
13 tion of hearsay.

14 And, finally, the witness HORINOUCI, to whom
15 this document was presented, professed himself only to
16 be unable to identify it as a document of the Foreign
17 Ministry. This could not be impeachment of him unless
18 to show that he should have identified it as a document
19 of the Foreign Ministry. He said nothing of the truth
20 of its contents, and therefore it cannot in that sense
21 be any impeachment of the witness.

22 I therefore submit that this document and all
23 others like it should be rejected as having no probative
24 value and as being improper rebuttal.
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1 MR. COMYNS CARR: May it please the Tribunal,
2 the author of the document is named at the head, name-
3 ly, MATSUDAIRA, the head of the First Section of the
4 East Asia Bureau of the Foreign Office. It is true
5 that the information which he conveys to his colleagues
6 in the Foreign Office in preparing this document is
7 stated by him to be hearsay. There are two points
8 about it, of course. One is to show the information
9 available to HIROTA in the Foreign Office at the par-
10 ticular date. From that point of view the fact that
11 it is stated to be hearsay is immaterial. The other
12 is, as some evidence, subject to the comment that it is
13 hearsay of the truth of the statements therein as
14 affecting the accused MATSUI and UMEZU.

15 THE PRESIDENT: But the man who wrote it says
16 it is of doubtful reliability.

17 MR. COMYNS CARR: Yes, that is quite true,
18 your Honor.

19 THE PRESIDENT: And these men are before us
20 on capital charges.

21 MR. COMYNS CARR: Your Honor, as it was marked
22 for identification at the request of the defense, I
23 thought we ought to tender it.

24 THE PRESIDENT: By a majority the objection
25 is overruled and the document admitted on the usual

terms.

1 CLERK OF THE COURT: Prosecution document
2 820-G, now exhibit 3269 for identification only,
3 will be marked as received in evidence and will
4 retain the same exhibit number.

5 The certificate of source and authenticity,
6 bearing the same document number, will receive
7 exhibit No. 3269-A.

8 (Whereupon, prosecution document
9 No. 820-G, previously marked for identifi-
10 cation, was received in evidence, and the
11 certificate thereto was marked prosecution
12 exhibit No. 3269-A and received in evi-
13 dence.)

14 MR. COMYNS CARR (reading): "The Course
15 Towards the Opening of the Imperial Conference
16 (January 14, 1938. East Asia Bureau. Section 1.
17 MATSUDAIRA).

18 "WANG KO-MIN recently put before Commander
19 TERAUCHI a question on these three points:

20 "1. Whether or not Japan will give full-
21 scale support to the new North China Regime.

22 "2. Whether or not it is Japan's intention
23 to regard CHIANG Kai-shek as a party to deal with.

24 "3. Whether or not it is Japan's intention
25

to make North China similar to Manchukuo.

1 "Commander TERAUCHI conveyed the above to the
2 Central Army authorities. The central authorities,
3 however, were unable to reach a decision, and the time
4 was wasted in vain. Commander TERAUCHI, in view thereof,
5 urged the War Minister or the Vice War Minister to come
6 to Tientsin. Meanwhile, almost simultaneously, Commander
7 MATSUI urged the central authorities to establish a
8 policy, stating that it was inadvisable to save the
9 situation by dealing with CHIANG Kai-shek. Under these
10 circumstances, the Central Army authorities had come to
11 hold the Liaison Conference and the Imperial Conference.
12

13 "As to the outline decided by the Imperial
14 Conference, I understand that Vice Minister UMEZU carried
15 it with him to China. (The foregoing is a private talk
16 by one of the staff officers of the Army General Staff,
17 which I heard indirectly through a high ranking official.
18 Therefore, I am doubtful as to its reliability.)"

19 MR. COMYNS CARR: I now offer in evidence IFS
20 document No. 820-D, which was marked for identification
21 only as exhibit 3270 at page 29,886. It was addressed
22 by Prime Minister KONOYE to Foreign Minister HIROTA
23 on January 21, 1938. The witness HORINOCHI was cross-
24 examined about it at pages 29,864-7, but declined to
25 identify it and said he couldn't recall the contents.

1 It now has a certificate showing it is a Foreign Office
2 document.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKE: If the Tribunal please, I
5 respectfully submit that from a perusal of the document
6 itself and the number 820-D, which shows a very low
7 number, the prosecution must have had this document
8 in its possession during the presentation of their main
9 case. Therefore in the absence of some showing that
10 this document was not available to them before they
11 closed their case, I don't think it is proper for the
12 submission of this document into evidence.

13 Moreover, this telegram or letter was shown to
14 the witness HORINOUCI and he did not deny or affirm,
15 as I recall it, the contents thereof. He merely stated
16 that he could not recall the contents and that from
17 the document as tendered to him at that time he could
18 not certify that it was the official document of the
19 Japanese government. Therefore I respectfully submit
20 that this does not impeach the witness HORINOUCI's
21 testimony in any respect.

22 Moreover, I respectfully submit that the sub-
23 stance of this document is covered by other evidence
24 already in the case, both on the prosecution's case as
25 well as on the defense side, and is repetitive.

THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: Your Honor, in our submission
2 this is a very important document, being the decision
3 as to general principles of national policy immediate-
4 ly after it was decided to have no dealings with Chiang
5 Kai-shek. Apart from the fact that the witness HORIN-
6 OUCHI declined to identify it, he had asserted in his
7 affidavit that he was in a position to tell us all about
8 HIROTA's opinions, the policy adopted by the government,
9 and so on, and to speak HIROTA's mind to us as well
10 as if HIROTA was speaking it himself. In our sub-
11 mission, the fact that he omitted all reference to a
12 decision of this kind rebuts his testimony in the strong-
13 est possible way.
14

15 THE PRESIDENT: The objection is overruled
16 and the document admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document 820-D,
18 now exhibit No. 3270 for identification only, will be
19 marked as received in evidence and will retain the same
20 exhibit number. The certificate of source and authen-
21 ticity, bearing the same document number, will receive
22 exhibit No. 3270-A.

23 (Whereupon, prosecution document
24 No. 820-D, previously marked for identifica-
25 tion, was received in evidence, and the certifi-

cate attached thereto was marked prosecution document No. 3270-A and received in evidence.)

MR. COMYNS CARR (reading): "Cabinet. No. 11
"January 21, 1938.

"From: Prime Minister Prince KONOYE,
Fumimaro.

"To : Foreign Minister HIROTA, Koki.

"I hereby report that the general principles
of the National Policy have been decided as per enclosure under separate cover.

"The General Principles of the National Policy

"Based upon the real sense of our national structure, and with national unity, we shall make it the basic principles of the administration to strive for the strengthening of our national power internally and to plan for the development of our Empire externally.

"With a period of emergency extending over several years as our objective, and after profound consideration, we shall carry out the following governmental policies:

"1. Our foreign policy shall be based on the realization of a close cooperation between Japan, Manchukuo and China, establishment of an eternal peace in the Orient and contribution to the peace of the world.

"2. Firmly maintaining inseparable relations

1 between Japan and Manchukuo, the establishment of an
2 important policy toward Manchukuo shall be expected,
3 positive efforts shall be made to carry out our policy
4 towards China, and efforts shall be made for the
5 economic development in the Southern Areas.

6 "3. Military aims in the China Incident shall
7 be perfectly attained, and the status of general mobili-
8 zation completed according to the necessity of national
9 defense as well as making plans to strengthen our mili-
10 tary preparedness. Furthermore, all measures shall be
11 taken in response to the prolonged resistance of China.

12 "4. Within the next four years the promotion
13 of the development of important industries shall be
14 planned, the over-all expansion of our productive
15 capacity achieved, and supplies of materials necessary
16 from the standpoint of national defense secured under
17 a comprehensive plan, including North China, etc.,
18 besides Japan and Manchukuo; international balance of
19 trade shall be improved by promoting the export trade.
20 Thus, the establishment of a national defense economy
21 and the strengthening of the economic power of our
22 Empire can be expected.
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1 "5. In the present Incident, the home front
2 shall be managed, aid given to the war dead, wounded,
3 and diseased and their families; proper measures shall
4 be taken for demobilization and necessary measures shall
5 be taken for the recovery of (Japanese) residents in
6 China. Thus, the future development of our Empire is
7 expected to be secured.

8 "6. The guidance of national thought shall be
9 strengthened and made complete, science and culture shall
10 be promoted, and it is expected that education will be
11 reformed in order to cultivate the character of the
12 people of a great nation.

13 "7. The determination of the nation towards
14 the emergency shall be increasingly emphasized, and to-
15 gether with the display of the sacrificial spirit, every
16 effort shall be made to enforce various policies neces-
17 sary for the stabilization of the national livelihood,
18 especially in the promotion of the development of agri-
19 cultural and fishing villages. Furthermore, the promo-
20 tion of the welfare of the medium and minor merchants
21 and manufacturers and laborers, as well as the physical
22 strength of the people shall be emphasized.

23 "8. Together with imposing necessary state
24 controls over prices, finance, industry, foreign trade,
25 transportation and communication, power, labor, etc.,

1 for the purpose of national preparedness, the promotion
2 of industry, and the stabilization of the national live-
3 lihood, an emergency financial plan shall be established.

4 "9. Efforts shall be made to eradicate and
5 overcome Communism and other thoughts or actions in-
6 consistent with our national structure.

7 "10. In order to assure the rapid and precise
8 execution of the above policies, the political administra-
9 tion shall be reformed and it is expected that the
10 various organs of the state shall be made to conform to
11 this reform.

12 "Reasons.

13 "Although the Chiang Kai-shek Regime has lost
14 its capitol city and other important districts, they have
15 not yet awakened from the anti-Japanese delusions;
16 instead, they are still expecting foreign assistance and
17 anticipating the economic and financial collapse of
18 Japan; they are devoting themselves to prolonged resist-
19 ance.

20 "Consequently, it can be judged that the na-
21 tional characteristic to rely on others and to insist
22 on rights of legitimate titles will tend to prolong an
23 obstinate resistance.

24 "Meanwhile both England and Russia are skill-
25 fully agitating China and therefore the general trend

1 of the situation is far from reassuring. Considering the
2 situation from the long point of view, it is necessary
3 for Japan to devote itself towards achieving the mili-
4 tary objectives of this Incident, and plan for the
5 undermining of the long term resistance by China, to-
6 gether with planning for a rapid overseas expansion;
7 and in order to meet any changes in the international
8 situation, with national unity, it is necessary for Japan
9 to establish a firm determination and attain complete
10 military preparedness. With the next few years as the
11 objective, it is indeed an urgent necessity that the
12 nation's course be clarified, and that all the elements
13 in our state devote themselves to the attainment of this
14 objective. It is for this reason that these general
15 principles of national policy were established, and as a
16 policy of the administration, it is expected that this
17 will be steadily realized."

18 I now offer in evidence IPS document No. 1841-
19 8B7 which was marked for identification, page 29,886,
20 as exhibit 3271. This is an instruction from the Chief
21 of the Information Bureau of the Foreign Office as to
22 propaganda in China, dated February 8, 1938. This was
23 put to the witness HORINOUCHI at pages 29,867-9; but he
24 declined to identify it. There is now a certificate
25 attached showing that it is a Foreign Office document.

THE PRESIDENT: Mr. Yamaoka.

1 MR. YAMAOKA: May it please the Tribunal, I
2 wish to object to this document. In the first place,
3 the witness HORINOUCI when he was questioned on this
4 document could not state definitely whether this telegram
5 was an official telegram of the Foreign Office. I have
6 looked at the original, together with my co-counsel,
7 and it is on paper which belongs to the Foreign Office,
8 but there are no signatures showing that it is the ori-
9 ginal or a copy of the original telegram actually sent.
10

11 Moreover, it just states that it was drafted
12 February 8, 1938. There is no statement nor any
13 insignia or mark showing that it was actually sent.
14 As your Honors will recall, during the testimony of many
15 of the defense witnesses, the Foreign Office principles
16 as to telegrams and official documents has been amply
17 explained. It is therefore possible that this may have
18 been a draft submitted by a minor bureau official in
19 the Foreign Office and merely remained in a draft form.
20

21 THE PRESIDENT: It is described as a telegram
22 in the certificate, and it has been coded and has a
23 number.

24 MR. YAMAOKA: There are many such documents, if
25 your Honors please, in the Foreign Office, and if docu-
ments of this nature are accepted without further proof

1 of authenticity than the prosecution has submitted up to
2 this time, I respectfully submit that it would be a very
3 serious matter to charge HIROTA with the implication of
4 this document.

5 THE PRESIDENT: We don't want to hear you, Mr.
6 Carr. The objection is overruled and the document ad-
7 mitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document 1841-
9 8B7, now exhibit 3271 for identification only, will be
10 marked as in evidence and will remain the same exhibit
11 number.

12 Certificate showing source and authenticity,
13 bearing the same document number, will receive exhibit
14 No. 3271-A.

15 (Whereupon, prosecution document No.
16 1841-8B7, previously marked for identification,
17 was received in evidence, and the certificate
18 thereto was marked prosecution exhibit No.
19 3271-A and received in evidence.)

20 THE PRESIDENT: You may read it after lunch.
21 We will adjourn until half-past one.

22 (Whereupon, at 1200, a recess
23 was taken.)
24
25

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: I will now read exhibit 3271. I was wrong in saying that it came from the Chief of the Information Section. It came from HIROTA himself.

(Reading) "Very Secret.

"Supervision: Chief of Information Section.

"Person in Charge: Chief of the 3d Section.

"Drafted: February 8, 1938.

"To: Consul-General OKAMOTO in Shanghai

"Consul-General NAKAMURA in Hongkong.

"From: Minister HIROTA.

"Subject: Matters pertaining to Propaganda Work for the Destruction of the Nationalist Government.

"(Coded) GO No. 560

"As an aid in hastening the self-dissolution of the Nationalist Government, this Ministry has heretofore been making various propaganda leaflets and pamphlets which aims at the disintegration within the enemy's army and the alienation of the people's minds.

1 These propaganda matters have been scattered in
2 various important areas by navy aircrafts and such.
3 In view of the fact that there seems to have been
4 frequent outbursts of internal dissensions in the
5 Canton, Szechwan areas for the past few days, it is
6 thought that this might be the appropriate time to
7 hasten the disintegration and destruction by aggra-
8 vating the domestic discord through the reinforcement
9 of this type of project, without losing the opportunity.
10 Therefore, since this type of work necessitates time-
11 liness in the future as regards matters which require
12 immediate planning, it is requested that your offices
13 also make appropriate leaflets and pamphlets, or give
14 consideration to the completion of the work through
15 means such as radios and newspapers.

16 "Furthermore, as an outline for the immediate
17 propaganda work, we feel that the following methods
18 are necessary:

19 "1. From olden times in Szechwan Province,
20 there is an idea to the effect that Szechwan should
21 be ruled by the Szechwan people. We must emphasize
22 this idea more strongly and at the same time help the
23 Szechwan Army unite against Chiang Kai-shek.

24 "2. In the Canton area, we must observe the
25 relationship between Yu Han-Mou, Chen Chi-Tang, and

Nanking and spur the internal disintegration.

1 "3. In the Hsu-Chow area, we must plan
2 the estrangement of the local army and the Central
3 Army.

4 "4. We must plan to cause and promote anti-
5 communistic movements in all areas.

6 "From Shanghai

7 "Request wire be relayed to Peiping as
8 reference."
9

10 I now offer in evidence IPS document No. 820B,
11 which was marked for identification at page 29886 as
12 exhibit 3272. It is a record emanating from the
13 Foreign Office East Asia Bureau of a report from the
14 Navy as to happenings at Imperial General Headquarters
15 on February 16 and of certain questions asked by the
16 Emperor, which was put to the witness HORINOUCI at
17 pages 29871-5, but he refused to identify it or at
18 page 29870 to admit that he himself had made a state-
19 ment to Baron HARADA to substantially the same effect.
20 I should add that there is now a certificate showing
21 this is an official Foreign Office document.

22 THE PRESIDENT: Mr. Yamaoka.

23 MR. YAMAOKA: If the Tribunal please, I
24 respectfully submit that the mere fact that a witness
25 is asked certain questions concerning a document and

1 his failure to recollect the matter contained therein
2 or his refusal to state that the document as tendered
3 to him is the original or not the original does not
4 qualify such evidence as rebuttal evidence. If such
5 were the rule a witness could be asked on cross-
6 examination a very wide range of questions on subjects
7 dealing perhaps with the main part of his testimony,
8 or even as to his credibility, and if documents are
9 simply admitted in rebuttal just on that ground, I re-
10 spectfully submit it would prolong the rebuttal to such
11 an extent and expand its scope to such an extent that
12 it would be almost unbearable. In addition I respect-
13 fully submit that this document probably was in the
14 possession of the prosecution long before it closed
15 its case and, in the absence of some showing excusing
16 their tender during its case, as was done in the case
17 of the defense when matters relating to general sub-
18 jects and properly dealt with in the general phases
19 were refused admission until proper excuses or proper
20 reasons could be shown, I respectfully submit that
21 these standards have not been met and the document
22 should be rejected.

23 THE PRESIDENT: Mr. Comyns Carr.

24 MR. COMYNS CARR: If your Honor please,
25 the answers to those objections are exactly the same

1 as those I have made before. With regard to the
2 question when it came into our possession, I cannot
3 say. The certificate is quite recent but, like so
4 many other documents, it may have been amongst a mass
5 of Japanese material in our physical possession at
6 an earlier date but the task of translating and
7 sorting them was so great that it didn't come to our
8 attention until it was put to the witness HORINOUCI.

9 THE PRESIDENT: Are you going to tender the
10 certificate?

11 MR. COMYNS CARR: Yes, your Honor.

12 THE PRESIDENT: You tender it with the
13 document it certifies?

14 MR. COMYNS CARR: Yes, your Honor. I
15 tender the certificate dated 7 January 1948 relating
16 to this document, 820-B.

17 THE PRESIDENT: The objection is overruled;
18 both documents are admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution document
20 820-B, now exhibit 3272 for identification only, will
21 be marked as received in evidence and will retain the
22 same exhibit number. Certificate of Source and
23 Authenticity bearing the same document number will
24 receive exhibit No. 3272-A.
25

(Whereupon, prosecution exhibit No. 3272,

1 previously marked for identification, was
2 received in evidence; the certificate attached
3 thereto was marked prosecution exhibit No. 3272-A
4 and received in evidence.)

5 MR. COMYNS CARR: If your Honor pleases:

6 "Very Secret.

7 "Matters Regarding the Imperial General
8 Headquarters Council in the Imperial Presence (February
9 18, 1938. East Asia I).

10 "The Imperial General Headquarters Council
11 in the Imperial Presence was opened on the 16th.

12 "The Navy stated that it is at least necessary
13 to obtain air bases in Anking in the Yangtze-Kiang area
14 and near Hongkong in South China in order to facilitate
15 future air raids.

16 "To the foregoing, the Army stated that it
17 plans to advance its military activities up to the
18 Lunghai Railway Area, but (although the capture of
19 Cheng-Chow was scheduled, Hsu-Chow will not be attacked
20 directly, but the Army planned on making the Chinese
21 troops withdraw through strategy, it is said) it cannot
22 consider the capture of Anking at present. The Army
23 never thought of dispatching its troops to the Hongkong
24 and Kuangtung area. As far as the Army was concerned,
25 it was necessary to leave a margin of power behind in

1 consideration of the situation vis-a-vis the Soviet
2 Union.

3 "To this statement, the Navy insisted, from
4 a naval viewpoint, on the necessity of expanding naval
5 power for preparing against Great Britain and America.

6 "Then the Emperor asked the War Minister
7 whether the Army could, at one and the same time,
8 carry out preparations against the Soviet and Great
9 Britain and America.

10 "The War Minister replied that he would have
11 the honor to answer after consulting other members of
12 the Cabinet on that point.

13 "The conference closed. (The above is a
14 private report by the Navy)."
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1 I now offer in evidence IPS document No.
2 1273-G, a telegram of 15 January, 1938 from Traut-
3 mann, German Ambassador in China, to the German
4 Foreign Ministry with copy to the German Ambassador
5 in Tokyo concerning China's earnest desire to ne-
6 gotiate peace and obtain Japan's real terms.

7 This matter was dealt with by the witness
8 HORINOUCI in his affidavit, exhibit 3260, paragraph
9 19 at pages 29,703-4, and on cross-examination at
10 pages 29,861-2. I should, perhaps, add that, of
11 course, this being a German telegram, the document
12 itself could not be and was not put to HORINOUCI, but
13 he was questioned about the subject matter. I also
14 offer the certificate of which, I am afraid, I haven't
15 myself a copy.

16 THE PRESIDENT: The certificate for 3272 has
17 not yet been distributed. My colleagues are asking
18 for it. I understand that copies are not yet avail-
19 able. I have a copy, though. We insist on a certifi-
20 cate being tendered with the document and distributed
21 with the document. I do not want to have to repeat
22 that direction.

23 MR. COMYNS CARR: Has your Honor got copies
24 of the certificate for 1273-G?
25

THE PRESIDENT: It is attached, yes.

1 Ordinarily the certificate is attached to the document.

2 Mr. Yamaoka.

3 MR. YAMAOKA: May it please the Tribunal,
4 in addition to the fact that we do not have a copy
5 of the certificate, I should like to advance the same
6 objections as for the previous documents.

7 THE PRESIDENT: The certificate is attached
8 to the copies given to us. Maybe it is attached to
9 yours, too, Mr. Yamaoka. Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution document
11 No. 1273-G will receive exhibit No. 3736. Prose-
12 cution document No. 1273 will receive exhibit No. 3736A.

13 (Whereupon, document No. 1273-G
14 and 1273 were marked prosecution exhibits
15 No. 3736 and 3736A, respectively, and re-
16 ceived in evidence.)

17 MR. COLYNS CARR: (Reading)

18 *Telegram (Secret Cipher Process)

19 "HANKOW 15 January 1938 1550 hours

20 "Arrived: 16 January 1938 0 20 hours

21 "No. 24 of 15 January /TOP SECRET/
22

23 "URGENT!

24 "President of the Executive Yuan KUNG today
25 expressed his thanks to me for everything that German
Government and I myself have done to bring about peace,

also for the words of the FUHRER and Reich Chancellor
Chinese Ambassador at the reception of the New Year.

"With regard to Chinese answer KUNG told me that as the Chinese Government did not by any means want to adopt an evasive attitude, many discussions were held in government circles, because the decision involved such difficult national and international complications. CHINA has suffered so much that she was willing to come to a real understanding with Japan, which would guarantee a lasting peace, and on this account she wanted to make all earnest endeavors 'to seek every possibility of peace.' From this reason she has also requested more sovereignty.

"KUNG requested the following oral report, which he had arranged previously, to be conveyed to the Japanese Foreign Minister:

"It is most unfortunate that CHINA and JAPAN should be engaged in the present armed conflict with all its disastrous consequences to both countries. CHINA still entertains the desire to reach a real understanding with JAPAN so that durable peace may be maintained in EAST ASIA.

"We have expressed the earnest wish to be informed of the nature and content of the "basic conditions" proposed by JAPAN because we want to use

every sincere effort to seek the sign of restoring peace between the two countries. With this additional information initiative, believe we shall be in a better position to express our views concerning the terms offered by JAPAN.'

"I have the impression that the Chinese Government might tone down the defect of her answer by this statement. Copy sent to TOKYO.

"TRAUTMANN"

I now offer in evidence IPS document No. 1517-C, D and E. These are newspaper cuttings in November, 1935 found in a Foreign Office file relating to the partially successful attempt at that time to establish an autonomous North China Government. The witness KUWASHIMA was cross-examined about this file and the contents of some of these excerpts at pages 29,536-47. He admitted, at page 29,537, that a covering letter found in it, addressed to HIROTA, bore the seal of SHIGEMITSU, and that letter became exhibit 3242. And at page 29,541 he admitted that the file was compiled by the Information Bureau of the Foreign Ministry and the contents circulated among the various bureaus in the Ministry.

At page 29,542 he admitted that another covering letter forwarding some of these extracts was

1 from Ambassador ARIYOSHI in China to HIROTA, and it
2 became exhibit 3242A.

3 And at page 29,543 he admitted the contents
4 of these cuttings were reported to the Vice-Minister
5 SHIGEMITSU, if not directly to the Foreign Minister
6 HIROTA.

7 The accused MINAMI was cross-examined about
8 the matter stated in these newspaper reports at pages
9 19,994-7 and denied the statements therein.

10 I should like to add, if it please the
11 Tribunal, that we offer these documents from two
12 points of view. As to the statements of fact therein
13 contained, the Tribunal has repeatedly ruled that
14 newspaper reports will be admitted as some evidence
15 of the facts therein stated so far as the sources
16 indicated; for instance, exhibit 2330A, page 17,647-8
17 where that principle was laid down. But apart al-
18 together from their probative value as to the facts
19 stated, we submit that the fact that they are shown
20 to have been available to HIROTA and SHIGEMITSU in
21 the Foreign Ministry and that they controvert the
22 evidence given by KUWASHIMA as to HIROTA's policy and
23 state of mind at this time renders them admissible
24 from that point of view also.

25 THE PRESIDENT: Colonel Warren.

1 MR. WARREN: If the Tribunal please, accord-
2 ing to the prosecution this does not contain facts
3 that the Court will listen to under the Court's
4 ruling. The Chinese press -- they did not tell you
5 what this is; this is a newspaper clipping from a
6 Chinese newspaper which was printed in English and
7 which I read a few minutes ago. It may be that it
8 has "Peiping, November 18."

9 He says it is an American newspaper. It is
10 an "Evening Post." I thought it was the "Shanghai
11 Evening Post." There is no certificate of authenti-
12 cation attached to the original document.

13 The reference which my friend made to the
14 fact that the Tribunal would take these newspaper
15 clippings under certain conditions was -- the condi-
16 tions were later removed, and the defense were not
17 permitted to put any in. One time in our case, if
18 the Tribunal will remember, we analyzed and screened
19 every document we had and discarded every one that was
20 a newspaper report because the Tribunal would not take
21 it.
22

23 This is directed to the accused DOHIHARA.
24 That the prosecution had this document at the time
25 they were putting the case on against DOHIHARA there
is little doubt. If it was lost this time among a

1 mass of Japanese documents, it was carelessness on
2 the part of the prosecution because it is in English.
3 The prosecution had knowledge of it at all times.

4 And, if you read through it, why, within
5 the newspaper report it makes reference to "they say"
6 or "they pointed out," "the Chinese charged today;
7 it mentions a "rumor." It is gossip, rumor, opinion,
8 newspaper clear through. They attempt to make noth-
9 ing out of it except that. They do not even authenti-
10 cate it themselves from a journalistic standpoint.
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1 With reference to where MINAMI was questioned
2 about this particular article on page 19,996 of the
3 record I see no reference to this newspaper report or
4 anything else in connection with it. To attempt to
5 impeach a witness on a collateral issue is something
6 that is not permitted in the courts with which I am
7 familiar. And this certainly is an attempt to impeach
8 a witness on a collateral issue.

9 THE PRESIDENT: There is one exception, of
10 course, but it doesn't apply here.

11 MR. WARREN: If the Tribunal please, we have
12 had, and the Tribunal knows it because of the time that
13 we had to take our recess, we had hundreds of such of
14 these that we were going to attempt to meet the prosecu-
15 tion on because we had to fight fire with fire, and to
16 lay one rule down for the prosecution and another for
17 the defense is something I don't think this Tribunal
18 will permit here or at any other time.

19 THE PRESIDENT: Well, the prosecution may be
20 relying on the exception; I don't know. They may be
21 contending that this document is evidence of a state-
22 ment made by DOHIHARA inconsistent with his testimony
23 in this court. But I don't recollect him giving evi-
24 dence either personally or by affidavit.

25 MR. WARREN: Your Honor, I was going to remark

1 about the DOHIHARA case specifically when your Honor
2 called it to my attention again. Having prepared the
3 DOHIHARA case I know that there was not one single word
4 of new matter brought in; we contented ourselves with
5 rebuttal testimony against the prosecution. The prose-
6 cution having had an opportunity to and having ques-
7 tioned the accused DOHIHARA without benefit of counsel
8 for a great length of time at the commencement -- before
9 the commencement of the trial, and having taken his
10 statement, we felt they could introduce such of that
11 statement into the record as they wanted to, and they
12 so did. We submit, your Honor, there is no remote
13 possibility of this being rebuttal evidence under any
14 theory or any rule known to any of the laws of the
15 various nations represented on this Tribunal.

16 MR. BROOKS: On behalf of the accused MINAMI
17 I wish to object to the introduction of these three
18 documents. Since he has been named by the prosecution
19 as having been one accused who was questioned on these
20 three newspaper articles my objection is based on the
21 ground that even considering these documents to be
22 proper evidence for rebuttal, that the prosecution is
23 too late in offering them now since they have not laid
24 a proper basis for their introduction.
25

As I have pointed out on another occasion to

1 the Court, where the prosecution has been cross-examining
2 a witness, I asked the Court for instruction on ~~one~~ occasion
3 if they were examining on such a document as this and
4 failed to produce the document or have it marked for
5 identification, if they were not bound by the witness'
6 answer. I wish to state --

7 THE PRESIDENT: We don't want to hear any
8 further.

9 By a majority, the objection is sustained and
10 the document rejected.

11 MR. FURNESS: If the Court please, may I be
12 heard?

13 THE PRESIDENT: We have rejected the document.

14 MR. COMYNS CARR: I now offer in evidence IPS
15 document No. 3230, being official minutes of a meeting
16 of the Budget Committee of the House of Peers on 16
17 February 1938. It deals with two subjects raised by a
18 certain Baron OKURA on which the accused KIDO was ques-
19 tioned. The first is the question of KIDO's knowledge
20 of the atrocities by the Japanese Army in Nanking and
21 Shanghai in the autumn and winter of 1937 to 8. In his
22 affidavit, paragraph 87, record page 30,841, he flatly
23 denies that he ever heard of the Nanking atrocities
24 until after the surrender. Cross-examined, pages
25 31,486 to 8 and 31,506, on the basis of a newspaper

1 report, which became exhibit 3342-A at page 31,515,
2 he repeatedly denied that he had ever heard of the
3 matter until he saw the newspaper report in court.

4 At record page 31,496 KIDO's counsel asked
5 that the minutes of the Diet proceedings should be
6 produced instead of the newspaper report. We now do
7 so and find that they are fuller and make the matter
8 more clear

9 The second part of this document is an answer
10 of the accused HIROTA to an interpellation by the same
11 OKURA about the peace negotiations with Chiang Kai-shek.
12 KIDO was cross-examined at record pages 31,486 and
13 31,489 to 95 also on the basis of a newspaper report
14 of the same proceedings but failed to recollect whether
15 he did or did not hear the answer by his colleague
16 HIROTA to this question. This answer, in our sub-
17 mission, puts a very different complexion upon HIROTA's
18 attitude to peace negotiations with China from that
19 given by the witness HOKINOUCHI on his behalf, especially
20 at record page 29,790 to 91.

21 I should add that when that document, the
22 latter newspaper report, was not admitted as an exhibit
23 during the cross-examination of KIDO, the Tribunal
24 intimated that it could be tendered again in rebuttal,
25 but as we now have the official report of the House of

1 Peers, as suggested by KIDO's counsel, we tender that
2 instead of the newspaper report as being a more
3 authentic document.
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THE PRESIDENT: Mr. Logan.

1 MR. LOGAN: If the Tribunal please, on behalf
2 of the accused KIDO I object to the first page and
3 half of the second page of IPS document 3230.

4 When the accused KIDO was on the stand he was
5 cross-examined from document 3198-A which was an ex-
6 cerpt from the Japan Time and Mail of February 18, 1938,
7 which reported the Diet proceedings of the upper house
8 held on February 16, 1938. At that time I stated I
9 had no objection to the document going in evidence and
10 it received exhibit No. 3342-A, as shown by record page
11 31,517-31,518. When he was asked if that document
12 refreshed his recollection he heard some remarks made
13 by Baron OKURA that articles were published calumniat-
14 ing the Japanese military in the Shanghai-Nanking region,
15 KIDO stated he had no recollection of it but readily
16 admitted that according to the article he had answered
17 Baron OKURA's question. That is shown in record pages
18 31,516, 7 and 8.

19
20 I did not object to the introduction of that
21 newspaper article in evidence; I consent that it go
22 in evidence. I did not ask that the minutes themselves
23 be produced as stated -- as counsel states on page
24 31,496 of the record. At that time I was referring
25 to another prosecution document, 3198-B. And even as

1 to that I did not ask that the minutes themselves be
2 produced. I was objecting to the introduction of
3 that particular newspaper article on the ground that
4 there was no evidence by the prosecution, and I am
5 quoting now, "that the proceedings themselves could
6 not have been produced and introduced into evidence,
7 which would be the best evidence."

8 The accused KIDO was not confronted with the
9 present IPS document No. 3230 which purports to be
10 the shorthand record of the same meeting mentioned
11 in exhibit 3342-A and which I consented go into evidence.
12 In view of the admission by the accused KIDO on page
13 31,516 of the record which he readily gave, it cannot
14 be offered to attack his credibility because there is
15 no question of credibility involved. This document
16 now being offered is merely repetitious of exhibit
17 3342-A and, furthermore, as shown in both of these
18 documents, the subject matter under discussion was
19 apparently wrongful action by the extreme sense of
20 superiority of the Japanese, which KIDO thought should
21 be corrected by education. At best this document
22 concerns a matter which is a remote collateral issue,
23 immaterial and irrelevant to the issues in the docu-
24 ment.
25

KIDO at that time held the minor position of

1 the Minister of Education, had absolutely no control
2 over any of the atrocities that occurred at that time,
3 and since it cannot be offered to effect his credibil-
4 ity I fail to see how it has any relevancy whatever to
5 his case.

6 MR. COMYNS CARR: It would probably be more
7 convenient if I dealt with my friend Mr. Logan's
8 objection to the first part of the document before
9 my friend Mr. Yamaoka takes his objection to the second
10 part of the document.

11 THE PRESIDENT: We will hear you, Mr. Carr.

12 MR. COMYNS CARR: If your Honor please, so
13 far from this being an irrelevant matter, it is a
14 matter which goes vitally to the case against KIDO
15 both on the Indictment and with regard to his credi-
16 bility. He is charged in this Indictment with re-
17 sponsibility for the long continued atrocities in
18 Nanking and elsewhere in China.

19 As I have already pointed out, in his affi-
20 davit, paragraph 87, he completely denies that he
21 ever heard of these atrocities until after the
22 surrender in 1945, and he goes on to say that if he
23 had heard of them he would certainly have done some-
24 thing about it. In his cross-examination it was sought
25 to show that that statement was untrue by reference to

1 the newspaper report to which my friend has referred
2 and which was exhibited which, at page 31,517, states
3 that Baron OKURA pointed out that "in the foreign press
4 of late were published such articles as calumniated
5 the Japanese military in the Shanghai-Nanking region,"
6 and then goes on to speak about the sense of superiority
7 of the Japanese people. In the newspaper report of
8 KIDO's reply it merely appears that he had spoken about
9 that latter matter, the sense of superiority of the
10 Japanese people and KIDO was able, therefore, to con-
11 tinue to deny, as he did at page 31,522, that these
12 proceedings in the Diet showed that he knew of the
13 Shanghai-Nanking outrages from the foreign newspaper
14 reports to which Baron OKURA was referring.
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1 Now, my friend, Mr. Logan, at page 31,496,
2 had objected to the use of the newspaper report, too,
3 at the time when that part of it dealing with this
4 matter of HIROTA, which is the second part of the
5 present document that I am reading, was under dis-
6 cussion, and not when this particular matter was
7 under discussion; and he had there objected to it
8 on the ground that the report of the proceedings
9 themselves could have been produced, which would
10 be the best evidence. Now, we have found the report
11 of the proceedings themselves, and in our view, in
12 our submission, it completely explodes KIDO's explana-
13 tion of the newspaper report and shows plainly that
14 he was aware from the foreign press and other sources
15 of the atrocities alleged to have been committed by
16 the Japanese Army in China. It doesn't specify what
17 the other sources were, but the Tribunal will
18 probably remember that the witness ISHII, called on
19 behalf of HIROTA, stated that full reports of the
20 International Committee in Nanking were sent by the
21 Japanese Foreign Office representative on several
22 occasions to HIROTA at the Foreign Office, and our
23 submission will be that that plainly was the other
24 source to which KIDO was referring in this matter.
25

THE PRESIDENT: The objection to the first

1 part of the document by Mr. Logan is overruled, and
2 that part is admitted on the usual terms.

3 There is an objection also to the part
4 affecting HIROTA, so I understand.

5 MR. LOGAN: May I just make a correction,
6 if the Tribunal please, with regard to the prosecu-
7 tions's remarks? Page 31,522 does not refer to any
8 newspaper reports denied by KIDO. He was denying .
9 that there was a conspiracy among these accused.
10 And, furthermore, with respect to that part of the
11 document just admitted in evidence, I would like
12 to direct the Tribunal's attention to the fact that
13 Marquis KIDO was referring to actions of the Japanese
14 troops in Shanghai, and not in Nanking.

15 THE PRESIDENT: We are aware of what the
16 accused KIDO said; we read every word of it.

17 Mr. Yamaoka.

18 MR. YAMAOKA: If the Tribunal please, on
19 behalf of the accused HIROTA, I wish to register an
20 objection from the last half of page 2 of this docu-
21 ment through to the end. In addition to the general
22 arguments submitted by Mr. Logan, in which I concur,
23 I wish to add that Mr. HIROTA has not denied the state-
24 ment attributed to him here; nor am I aware of any
25 statement to the contrary by any witness on behalf of

1 Mr. HIROTA. During the presentation of his case
2 many speeches in the Diet by Mr. HIROTA were presented
3 before this Tribunal setting forth in practically
4 identical -- if not, very similar -- language the
5 purport of the answers here given. Therefore, we
6 respectfully submit that this does not in any way
7 impeach any of the testimony on behalf of Mr. HIROTA,
8 but is merely cumulative and repetitive of other
9 testimony in his case. Therefore, we submit that
10 this should not be admitted.
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THE PRESIDENT: Mr. Carr.

1 MR. COMYNS CARR: Your Honor, with regard
2 to the second part, it is quite true that HIROTA has
3 not denied making this statement. As my friend says
4 he has not denied anything. But he did call on his
5 behalf the witness HORINOUCHI, who professed to be
6 able to tell us all about his extreme pacific inten-
7 tions and desire to arrive at a compromise with Chiang
8 Kai-shek.
9

10 In the document we are now tendering, it
11 appears that, being attacked not in the full Diet but
12 in a committee of the Diet, the Budget Committee of
13 the Diet, by somebody who blamed him for being too
14 conciliatory with Chiang Kai-shek, he stoutly denied
15 that he had ever tried to effect a compromise with
16 him at all. Moreover, seeing that it was at the same
17 session of the committee in which KIDO admittedly took
18 part, we tender this also as evidence against KIDO, who
19 said he could not remember whether he had or had not
20 heard his colleague, HIROTA, give this answer, an answer
21 which, of course, affects HIROTA's cabinet colleagues,
22 including KIDO, as well as himself, particularly but
23 not only if they were present and heard it.
24

25 MR. LOGAN: In view of the prosecution's
attempt to include the accused KIDO in the latter part

of this document, may I be heard briefly?

1 THE PRESIDENT: We decided on the document
2 so far as it affects KIDO, Mr. Logan.

3 How does the second part affect him? I do
4 not see that it does.

5 MR. LOGAN: I do not see how it does, either,
6 but the prosecution says it does and I want to answer
7 that briefly. May I?

8 THE PRESIDENT: If they have implicated you,
9 yes; we cannot refuse to hear you.

10 MR. LOGAN: With respect to this second part
11 of this particular meeting, as I recall it, Marquis
12 KIDO was asked if he had heard Mr. HIROTA make certain
13 statements at the meeting. He testified at that time
14 it was the habit of the ministers of state to go from
15 one committee meeting to another and they were extremely
16 busy during the month of February each year.

17 Now, how the production of the document of
18 what Baron OKURA and Mr. HIROTA said to one another
19 would show that Marquis KIDO heard it is beyond my
20 comprehension.

21 THE PRESIDENT: We will recess for fifteen
22 minutes.

23 (Whereupon, at 1445, a recess was
24 taken until 1500, after which the proceedings
25

were resumed as follows:)

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: May it please the Tribunal,
5
6 I do not propose to argue any further objections.
7 However, I do desire to correct the statement which
8 my learned friend made to it, which I believe was to
9 the effect that the accused HIROTA admitted nothing
10 and denied nothing. I believe the Tribunal is well
11 aware that he has pleaded not guilty to the Indictment.

12 Moreover, I wish to state that any allusion
13 by my learned friend to the failure of the accused
14 HIROTA to take the stand is not only improper according
15 to the practice to which I am accustomed, but I respect-
16 fully submit violates the statements made in respect
17 thereto by the learned Chief of Counsel.

18 THE PRESIDENT: Mr. Comyns Carr.

19 MR. COMYNS CARR: Your Honor, my learned
20 friend himself informed the Tribunal that HIROTA had
21 not denied making this particular statement and it was
22 necessary for me to meet that observation, which was
23 put as a ground of objection to the document being
24 received, pointing out that he had not denied anything.

25 THE PRESIDENT: The objection is overruled

1 and the document admitted on the usual terms; that is,
2 the second part of the same document.

3 The whole document is admitted.

4 CLERK OF THE COURT: The Stenographic Records
5 of the Committee Meetings of the House of Peers, the
6 73rd Diet, will receive exhibit No. 3737 for identifi-
7 cation only. The excerpts therefrom, being IPS document
8 3230, will receive exhibit No. 3737-A.

9 (Whereupon, the document above re-
10 ferred to was marked prosecution exhibit No.
11 3737 for identification; the excerpts there-
12 from being marked prosecution exhibit No.
13 3737-A and received in evidence.)

14 MR. COMYNS CARR: I will now read the whole
15 of the first portion relating to KIDO. With regard
16 to the second portion, as far as I am concerned it is
17 only necessary to read a few sentences, but if my
18 friend Mr. Yamaoka wants me to read more I will do so.

19 "Proceedings of Budget Committee Meeting of
20 February 16, 1938

21 "Excerpts from Shorthand Records of Committee
22 Meetings of the House of Peers - 73rd Diet.

23 "Baron OKURA, Kinmochi: I should like to
24 ask the Premier, but he is now attending th. plenary
25 session and is to be back later, so I should like first

1 to ask the Education Minister who is now attending.
2 I have about twelve questions in general, but since
3 all of them do not have connections with each other,
4 I should like to have a reply after each question.
5 What I wish to ask the Education Minister is this.
6 Recently, in foreign newspapers, I find various
7 distasteful things written about the actions of the
8 Japanese forces in the Nanking and Shanghai areas. I
9 don't think that it is all true. I do think that
10 foreign newspapers write such impossible things for
11 the purpose of defaming Japan. However, I believe that
12 receiving such defamation is extremely disgraceful to
13 the Japanese people. Even if one or two persons among
14 our loyal soldiers should commit wrongful acts, it is
15 extremely regrettable. According to the general experience
16 of those of us who have been abroad for a long time,
17 we often had to frown upon the attitudes of a large
18 number of Japanese people overseas shown towards the
19 races or peoples inferior to them when Japan is
20 powerful. In short, I do not know to what extent
21 the mistaken sense of superiority of the Japanese
22 people has so far caused the world to misunderstand
23 the righteous Japanese assertions and attitudes both
24 in Manchuria and in China. As for the articles in
25 foreign newspapers, I guess they are written with

various imaginations based on the long standing
1 actions of those Japanese people. However, I feel
2 that it is not only a small portion of the Japanese
3 forces, or of the Japanese people who went overseas
4 which should be held responsible, but rather that it
5 is the entire Japanese people who are guilty, and that
6 the fundamental idea of the Japanese people is wrong.

7 "In order to correct this, we must start
8 fundamentally from the point of education. If at a
9 time such as now, when Japan is about to establish
10 a continental policy, aspiring to advance to the
11 continent to become the leader of the Asiatic races,
12 Japan comes into contact with the other races with
13 this false sense of superiority as she has in the
14 past, it is clear that the Japanese will soon be
15 disliked by all the people of the world. I regret
16 very much that the education in the past did not consider
17 this point at all. In the future, I feel that the
18 entire education, from the time of elementary education,
19 must be based somewhat along the lines of the Yamato
20 Spirit /TN: Japanese spirit/ which contends that weak
21 people must be thoroughly loved and protected and
22 strong villainous people must be opposed completely.
23 I feel that this has been altogether lacking so far.
24 Therefore, I would like to inquire of the Education
25

1 Minister as to what aspirations he has about this
2 matter and as to what kind of policy he will take in
3 the future.

4 "Minister of State (Marquis KIDO, Koichi):

5 "I shall answer. I have also heard about the
6 reports concerning the actions of Japanese troops in
7 Shanghai which was referred to, and just as Baron
8 OKURA said, I too do not think that they are all
9 absolutely true. However, on the other hand, it is
10 a fact that there are quite a number of such reports
11 from other sources. And as stated in the Baron's
12 talk, I have also often heard about the wrongful
13 actions of our nationals abroad caused by extreme
14 senses of superiority in and around China and
15 Manchuria. As stated, I too believe this is caused
16 by some shortcomings in education. I believe that
17 it is especially necessary for a progressing Japan
18 which will expand to the continent in the future to
19 be concerned with this point and make reflections.

20 "We have been aware of the fact that it is
21 necessary to give a more grand and virile education
22 from elementary school days in order to maintain
23 the broadmindedness of a great nation. Up to this
24 date, we have paid some attention and started working
25 in that direction in the summarized programme of

1 instruction which was revised last year. In the
2 future, we want to make full studies and carry out
3 remedial measures....."

4 That ends the first part. My friend Mr.
5 Yamaoka tells me he wishes the whole of the remainder
6 to be read, so I will read it.

7 "Baron OKURA, Kimmochi: Next, I wish to
8 ask the Foreign Minister some questions. I expect
9 to ask the Premier later about the general foreign
10 policy, but I now wish to ask the Foreign Minister
11 about the following three points. I should like to
12 have these also answered after each question. Here
13 is the first question.

14 "Some time ago, through the good offices of
15 the German Ambassador, a negotiation for peace was
16 conducted between Japan and the Chiang Kai-shek
17 government. But it ended unsuccessfully, and a
18 Japanese declaration was issued as you know to the effect
19 that we will, from now on, ignore the Chiang Kai-shek
20 government. However, in view of the Government's
21 former attitude, its way of guiding the people, and
22 the fact that, at that time, Nanking had already been
23 captured, we cannot understand the intention of the
24 government in still dealing with the Chiang Kai-shek
25 government before the declaration. Was the Japanese

1 government thinking until just before the 14th of
2 January that it might, depending upon the occasion,
3 cooperate hand in hand with Chiang Kai-shek, who had
4 for many years led the 400,000,000 Chinese people and
5 forcibly instructed them to be anti-Japanese, and who
6 had tried to resist us after the war began, even by
7 cooperating with the Communist Party? Otherwise, we
8 are sure that the Japanese government would never
9 have come to terms with them through a foreign envoy's
10 mediation. This is truly the point that we cannot
11 understand. I was of the opinion that we should have
12 absolutely opposed the Chiang Kai-shek government
13 since the time they became friendly with the Communist
14 Party in either September or October of last year,
15 although I am not sure of the exact date. Certain
16 people are saying this; and I have heard it often:
17 that Chiang Kai-shek is a cat and other notable persons
18 of China are all mice; that as long as the cat is in
19 the country or in the house, the mice will never come
20 out; at a single cry of the cat, the mice will be
21 frightened; and that, in a situation whereby it is
22 not known when Chiang Kai-shek will show up, the other
23 notables of China will never really feel like
24 establishing the peace of the Orient in cooperation
25 with the Japanese.

1 "And we too thought that they were absolutely
2 right. We, therefore, thought around last fall that
3 we must absolutely destroy Chiang Kai-shek now that
4 he was in league with the Communist Party; and also
5 that the government was of the same opinion; and that
6 it was guiding the people with that view; but suddenly
7 it announced that it had tried to compromise with
8 Chiang Kai-shek at the suggestion of the German
9 Ambassador. In January, for the first time it was
10 announced that the government will neither cooperate
11 nor have any dealing with the Chiang Kai-shek govern-
12 ment any more. This was extremely incomprehensible to
13 us. What was the idea in responding to the plan?
14 Was it the idea that depending upon circumstances
15 it would be all right to cooperate with Chiang Kai-shek
16 in the future? What will be the relations with the
17 Communist Party then, and with the other leaders? Why
18 did the government consent to the negotiation when
19 it is clear that Chiang Kai-shek who had carried out
20 such education for scores of years, does not truly
21 intend to cooperate with Japan in earnest just because
22 he became friendly suddenly after being defeated in
23 war? I should like to hear what the intention of the
24 government was in the matter. This may be answered
25 either off the record or in a secret session if

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necessary. I would like to have a clear answer if
you please.

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"Minister of State (Mr. HIROTA Koki):

1 "I have just been asked to state the true cir-
2 cumstances leading to the decision, at one time, to
3 commence direct negotiations with the Chinese National
4 Government through the intermediation of Germany. I
5 have generally explained clearly on this problem since
6 the opening of this Diet session in my speeches at the
7 plenary meeting, and at the budget committee meetings of
8 the House of Representatives.
9

10 "Since the very beginning of this Incident, we
11 have adopted the policy of local settlement and non-
12 aggravation. It goes without saying, however, that in
13 those days we had been negotiating constantly with the
14 Chinese in compliance with the policy of local settle-
15 ment. But it became impossible for Japan to continue
16 that policy of local settlement and non-aggravation be-
17 cause of the subsequent condition of the Chinese attitude
18 which you well know. Since they were facing Japan with
19 a very strong anti-Japanese feeling, we decided on a
20 policy whereby we had to necessarily chastise them. Even
21 after that, however, parallel with chastisement by force
22 of arms, we were constantly continuing negotiations with
23 the hope of making them reflect over themselves as much
24 as possible, if they are to make reflections at all, and
25 to make them correct the extremely wrong ideas of Chiang

1 Kai-shek and of all others in the National Government,
2 if it was at all possible. These negotiations were
3 carried out by means of contacting various nations.
4 Especially in those days, when the resolution of aiding
5 China was passed in the meeting of the League of Nations
6 and when conference of the Nine Power Treaty was to be
7 held, there was a tendency of the Powers to jointly
8 settle this incident with their sympathy directed toward
9 the Chinese. Even then, it was impossible for Japan to
10 accept the mediatory acts of the Powers, although Japan
11 notified those Powers, especially Germany and Italy
12 respectively, of Japan's preparedness for negotiating
13 with China if China made reflections and requested a
14 direct negotiation for peace with Japan.

15 "Various nations informed Japan of China's
16 attitude, but it was as strong as ever. China had been
17 strongly stating that she would never independently
18 negotiate with Japan for the purpose of settling this
19 Incident. Naturally she stated this in the conference
20 of the Nine Power Treaty.

21 "Then later, the Germans made a proposal to us
22 to the effect that the Chinese intention of entering
23 into direct negotiations with Japan seemed fairly in-
24 tense, and that the Chinese had heard that Japan would
25 accept it in that case, but wished to obtain Japan's

1 view as to the attitude which the Chinese must have. So
2 we decided upon the four basic conditions as I have
3 fully announced in the Diet. Then we answered the Ger-
4 mans that besides these four conditions Chiang Kai-shek
5 would have to put an actual end to the situation of
6 being co-operative with the Communist Party, and that
7 Japan might agree to open negotiations on the basis of
8 these four conditions, provided that Chiang would show
9 certain evidence of complying to the spirit of the so-
10 called anti-comintern by severing relations with the
11 Communist Party or ousting those who were in intimate
12 relations with it.

13 "It seems in the last interpellation there were
14 words to the effect that Japan tried to compromise with
15 Chiang Kai-shek. There is absolutely no truth in it.
16 We took the attitude that we would accept a direct
17 negotiation if Chiang Kai-shek would accept the terms
18 demanded by Japan and would ask for peace. However,
19 they gave various noncommittal answers to the terms that
20 Japan had presented and no sincerity was perceived on
21 their part to the last.

22 "As the result of our reaching the decision that
23 we can no longer take the attitude of trying to settle
24 the situation by dealing with Chiang Kai-shek, we came
25 to issue such a declaration. Such being the case, Japan

1 has been endeavouring to make the Chinese Nationalist
2 Government made reflections, if possible, while chastis-
3 ing their mistaken ideas by armed force....."

4 Your Honor, the next document on my list, No.
5 2570-B, I am not offering at this moment. It will be
6 offered shortly by Judge Nyi.

7 The last two, 1685-C and 1632-VV, are closely
8 connected together. 1685-C, entitled, "Matters Decided
9 Upon at the Five Ministers Conference, Decided by the
10 Cabinet Meeting on August 16, 1938," and 1632-VV, an
11 excerpt from the KIDO Diary for the same date, which
12 shows that he was present and took part in that Cabinet
13 Meeting; these documents were not put to KIDO in cross-
14 examination but they rebut the following matters in his
15 affidavit:

16 1. KIDO stated in his affidavit at paragraph
17 104, record page 30,860, that he on September 7, 1938,
18 put emphasis on the necessity that KONOYE should summon
19 up his courage and proceed to settle the China Affair
20 even if it had to be with Chiang Kai-shek;

21 2. KIDO stated in paragraph 324 of the affi-
22 davit, record page 31,206, "At no time did I ever vote
23 for initiating any war nor did I vote for the continu-
24 ance of an war;"

25 3. At paragraph 98 of his affidavit, record

1 page 30,853, KIDO infers that he didn't know about the
2 decisions, as are outlined in I.P.S. document 1685-C,
3 because he says on July 23, 1938, that he and KONOYE
4 talked about the progress of the Five Ministers Council,
5 and then he states, "I was not a member of the Five
6 Minister Council mentioned above." He leaves the im-
7 pression that he knew nothing about the decisions that
8 were being taken at that time;

9 4. KIDO stated in his affidavit, paragraph
10 324, record page 31,206, he had absolutely no partici-
11 pation in any premeditated plan for aggressive war either
12 in general or in detail, and in the same paragraph, at
13 record page 31,207, he stated, "At no time did I ever
14 have any conversation with any of the other accused or
15 anyone else involving the planning, scheming, and con-
16 spiring as alleged in the Indictment;"

17 5. KIDO stated in his affidavit at paragraph
18 64, record page 30,825, that KONOYE's policy was local-
19 ization and non-expansion of the China Incident, and
20 that, "On my part, I gave counsel to him in the execution
21 of his policy to the best of my ability."

22 The original of document No. 1685, which was put
23 in at record page 3,609, includes the whole of it, and
24 therefore this 1685-C is technically in evidence, but
25 the only part of it that has yet been used is exhibit

270, the speech by SATO, which is part of the document.

1 THE PRESIDENT: Colonel Warren.

2 MR. WARREN: If the Tribunal please, on page
3 11 of this document is what might be called a separate
4 and distinct document, but it is called an appendix.
5 Since argument on this would be separate and not the
6 same as argument on the balance of the document, which
7 will be made by the other counsel, I desire at this
8 time to object to the introduction of that portion of
9 the document which appears on page 11 and is character-
10 ized as an appendix.

11
12 THE PRESIDENT: An appendix is usually part of
13 another document. This appears to be so.

14 MR. WARREN: It is part of this document as
15 an appendix, but I am objecting only to that portion.
16 My objection to that is this: that the witnesses to
17 whom the original document was put or at least they were
18 questioned concerning it were not my witnesses, and in
19 the general -- I mean, in the individual defense phases
20 the Tribunal refused to permit us to put on general
21 evidence.

22 Actually, the prosecution having this partic-
23 ular document in their own possession and me never
24 having even seen it and not realizing that anything
25 concerning DOIHARA was contained therein, I had

1 absolutely no answer -- I mean, no answer to it, and
2 I couldn't come before the Tribunal because of lack of
3 knowledge.

4 Also, since obviously the appendix is an
5 interpretation by some person unknown to the Tribunal,
6 it within itself invades the province of this Tribunal.
7 The Tribunal can place its own interpretation upon the
8 document.

9 THE PRESIDENT: It is merely a directive as to
10 how something is to be carried out. That appears on
11 page 9, which refers to the attached sheet.
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1 MR. WARREN: Then, I ask the Court to refer
2 back to the record and take judicial knowledge of the
3 fact that any such commission as an organ under the
4 membership of DOHIMARA, TSUDA, and BANZAI appears no-
5 where in the record, and if it is true, the prosecu-
6 tion is attempting to impeach their own testimony.

7 Now, since obviously this is new matter in so
8 far as DOHIMARA is concerned, we would have to take
9 into consideration in our summation this whole thing
10 and try to tie it in. That would take considerable time.
11 In addition to that we would also have to ask the Court
12 for permission to bring in rebuttal evidence to this
13 as well. Since it is at best of small importance,
14 we ask the Tribunal, if it is admitted, that it be
15 admitted but not as against the accused DOHIMARA, who
16 had absolutely no opportunity to know of it until this
17 document was served on us yesterday. I think.

18 For the purposes of my objection, I can boil it
19 down to the words, "The commission is understood as
20 an organ under the leadership of DOHIMARA," and will
21 amend my motion to that effect, to include only those
22 words.

23 THE PRESIDENT: Mr. Logan.

24 MR. LOGAN: If the Tribunal please, in my sub-
25 mission this is another example of the unfairness of

1 the prosecution. Here is a document which apparently
2 they had, from the low number, many months ago, before
3 they closed their case. They offer it under the guise
4 of rebuttal evidence, but it is not. It is new matter
5 that they failed or forgot to put in in their case.
6 In addition to that, the accused KIDO was never confront-
7 ed with this document. He was never asked any ques-
8 tions about it. Why not?

9 THE PRESIDENT: I am going to ask Mr. Carr
10 to answer that question.

11 MR. LOGAN: Well, it was rhetorical, if the
12 Tribunal please, but I would like to have an answer
13 from him on it. In all fairness to any of these
14 accused, if the prosecution has a document it should
15 be presented to the man when he takes the stand and
16 not sneaked in by this method in the trial.

17 With respect to the statements made by KIDO
18 in his affidavit, he makes the statement, yes, that he
19 never did attend any of the Five Ministers' Conferences,
20 and that is still true. We ourselves did offer in
21 evidence another excerpt in August showing that he
22 had a report from the Five Ministers' Conference.
23 Frankly, I don't know on which document they intend to
24 rely here, whether it is 1632-VV or 1658-C. In 1632-VV
25 KIDO states in his diary that the cabinet heard from

1 Foreign Minister UGAKI a report on the Five Ministers'
2 Conference which was continued from the previous meet-
3 ing. There is nothing in that document about any
4 report decided upon at the Five Ministers' Conference
5 having been accepted or adopted by the cabinet.
6 If we examine document 1685-C we find six different
7 items which were adopted by the Five Ministers' Con-
8 ference on previous dates.

9 I might say generally to the Tribunal that
10 if the prosecution intend to continue to offer docu-
11 ments which they should have done on their case, it
12 will necessitate many, many more months trial. We
13 will have to apply to reopen this case and put our
14 accused on the stand and explain various items such as
15 this which they should have offered in their case.

16 THE PRESIDENT: We may have to give you the
17 right to reply to entirely new matter. We must face
18 up to that. Otherwise you will be put in the position
19 of having evidence offered against you without any
20 chance to reply to it.

21 MR. LOGAN: If the Tribunal please, we have
22 twenty-six accused here, and the first few days of this
23 rebuttal evidence we have only had evidence offered as
24 to several of them. At the present time we have at
25 least 200 documents that the prosecution has served on

1 the defense that they intend to offer. How many more
2 they intend to offer I do not know, but I would like
3 to call to the Tribunal's attention the fact that they
4 only offered about 2,000 on their direct case. Are
5 they going to offer 2,000 in rebuttal?

6 I might also state, if the Tribunal please,
7 that it took over eight months for them to introduce
8 the 2,000 on their own case. Frankly, I think it is
9 an imposition for the prosecution to present such docu-
10 ments as these that they failed to present in their
11 own case; and they offered such paltry excuses, that
12 "it was lost among our documents" or "we weren't aware
13 of it," when the low numbers of these documents distinct-
14 ly show that they had it for many months.

15 THE PRESIDENT: We are not joining in any
16 attack on the prosecution. We are merely intimating
17 to you that you may have rights to answer them.

18 MR. LOGAN: I appreciate that, if the Tribunal
19 please, but it is the length of the trial that is
20 worrying all the defendants' attorneys here.

21 THE PRESIDENT: There is a great deal of
22 sympathy with your attitude, Mr. Logan, but we must
23 allow for the very unusual circumstances associated
24 with the prosecution of such a case.

25 MR. LOGAN: If the Tribunal please, getting

1 back to this particular document, it is our contention
2 that this is not proper rebuttal evidence as to KIDO,
3 and such evidence should be received in rebuttal only
4 against the accused as have been examined on the docu-
5 ment, and he wasn't examined on this document. Not
6 only that, but he was not examined on any one of the
7 statements that Mr. Carr stated he made in his affi-
8 davit. Now, certainly something which the prosecution
9 has practically admitted by failure to examine him on
10 should not be made subject of rebuttal. In other
11 words, in the practice I am used to, a foundation
12 has to be laid for rebuttal evidence, but there was no
13 foundation laid with respect to this document. KIDO
14 wasn't asked one word about anything contained in this
15 document when they cross-examined him. Furthermore,
16 this document 1632-VV they have had since December,
17 1945, when KIDO voluntarily gave it to them. Why
18 they are offering this excerpt at this time I don't
19 know.
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THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: Your Honor, if the Tribunal
2 thinks that the fact that this document was not put in
3 in cross-examination would give rise to a right for
4 further evidence to be called to answer it, if it is
5 admitted, the prosecution would prefer to withdraw it,
6 especially as the whole of the contents of it are in-
7 cluded in document 2570-B, shortly to be offered, which
8 was put in detail to ITAGAKI in his cross-examination.

9 THE PRESIDENT: In those circumstances, you
10 may see fit not to press it, Mr. Carr.

11 MR. COMYNS CARR: If your Honor please, the
12 only purpose of offering it was to show that these were
13 not merely Five Minister Conference decisions, but were
14 also approved by the cabinet.

15 That concludes this first order of proof, your
16 Honor. I understand my friend Mr. Roberts has a map
17 which he has reserved, which he desires to present at
18 this time, and that may be more convenient than asking
19 Judge Nyi to proceed with the next order of proof.

20 THE PRESIDENT: The objections to the last
21 document are sustained, and the document is rejected.

22 MR. ROBERTS: May it please the Court, at this
23 time I offer defense document No. 2948, which is a map
24 of Shanghai, with a stipulation by counsel that the
25

1 relative positions of the Japanese naval landing force
2 headquarters, Patzejao, the Commercial Trust Building,
3 and the Hung Jao Airfield, as shown on this map, are
4 substantially correct as they existed on or about August
5 9, 1937.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 2948 will
8 receive exhibit No. 3738.

9 (Whereupon, the document above
10 referred to was marked defense exhibit No.
11 3738 and received in evidence.)

12 THE PRESIDENT: Judge Hsiang.

13 JUDGE HSIANG: On order list No. 2 for the
14 prosecution, the first nine documents will be presented
15 by me; the remainder will be presented by Judge Nyi.

16 I will present the first one on the list.

17 We shall first introduce IPS document No. 2981,
18 being a telegram from Foreign Minister SHIDEHARA to
19 Consul General HAYASHI at Mukden in connection with
20 ITAGAKI's activities in Mukden prior to 18 September
21 1931. ITAGAKI admitted, under cross-examination, that
22 there was a telegram, but when confronted with the
23 present document he could not tell whether the one shown
24 to him by General MIYAKE bore the same contents as the
25 present document, record page 30,347-8.

1 This document is hereby tendered to rebut the
2 denial of ITAGAKI as aforesaid.

3 THE PRESIDENT: Mr. Mattice.

4 MR. MATTICE: If the Tribunal please, I am
5 appearing on behalf of the accused ITAGAKI.

6 As I understand it, this document, this piece
7 of evidence, is offered by way of impeachment. Now,
8 as counsel has just said, there was no denial on General
9 ITAGAKI's part that a telegram was shown to him. He
10 said that he could not be sure that this was the same
11 telegram but that the subject matter -- and of course
12 that is the important thing about it -- that the subject
13 matter was contained in the telegram which was shown
14 him.

15 There is perhaps one respect in which there
16 might be said to have been a denial, when ITAGAKI said
17 that he had at least no memory of anything in the tele-
18 gram regarding a society the name of which was Koku Sui
19 Kai.

20 So it seems to us that no sufficient founda-
21 tion has been laid in respect to the telegram which
22 would warrant evidence by way of impeachment.

23 THE PRESIDENT: Colonel Warren.

24 JUDGE HSIANG: I think perhaps it is more con-
25 venient for me to answer that point first.

1 THE PRESIDENT: Have you another objection to
2 the same document?

3 MR. WARREN: Yes, sir, I do.

4 THE PRESIDENT: No, you had better take it.

5 MR. WARREN: All right, if your Honor please.

6 THE PRESIDENT: On behalf of the accused
7 DOHIHARA?

8 MR. WARREN: Yes, sir. I appear on behalf of
9 the accused DOHIHARA, because this message refers to the
10 Kwantung Army and also mentions the Captain NAKAMURA
11 case. General DOHIHARA, as the Tribunal will recall,
12 was placed in charge of the negotiations on the NAKA-
13 MURA case, according to the Lytton Report.

14 In the first place, I should like to point out
15 to the Tribunal that an attempt to impeach a witness on
16 the grounds of the type of testimony contained in this
17 telegram ordinarily would not be accepted. It starts
18 out there in the second paragraph, "We have heard that
19 Colonel ITAGAKI and others" and then further on they
20 say, "We hope it is merely a rumor." There aren't any
21 facts contained in here. The man who sent the telegram
22 knows that. The telegram apparently originates with
23 Minister SHIDEHARA and is directed to General HAYASHI
24 at Mukden.
25

We know by the testimony of prosecution witnesses

1 that the information concerning the affairs in China
2 and in Manchukuo were furnished to the Foreign Minister
3 by his consuls general, and concerning that testimony
4 MORISHIMA, Morito, in prosecution's exhibit 245, states
5 that he was the one -- I mean he states that during the
6 period of time that this telegram was dispatched he was
7 acting consul general. In this exhibit he states in
8 substance that in order to properly perform their duties
9 and functions that they availed themselves of all
10 channels of information, and states that it was their
11 duty to draw conclusions and to forward them. And so
12 we have here in this telegram conclusions based upon
13 conclusions of some other person, which is based upon
14 rumor, hearsay, and whatnot.

15 Shall I finish my argument in the morning, your
16 Honor?

17 THE PRESIDENT: Oh, well, have you much more
18 to say? Have you much more to add about it?

19 MR. WARREN: Your Honor, I intend to raise this
20 question, that they are attempting now to impeach their
21 own evidence, and I want to refer to some excerpts from
22 the Lytton Report to show that this evidence here is
23 exactly what I said it was, and that the Lytton Report,
24 which they must rely on -- this is the content. They are
25 not impeaching our testimony; they are impeaching their
own.

1 THE PRESIDENT: We will adjourn until half-
2 past nine tomorrow morning.

3 (Whereupon, at 1600, an adjournment
4 was taken until Wednesday, 14 January 1948,
5 at 0930.)

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